

**PREPARED STATEMENT OF THE  
FEDERAL TRADE COMMISSION:  
OVERSIGHT OF THE FEDERAL TRADE COMMISSION**

**Before the  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION  
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT  
SAFETY, INSURANCE, AND DATA SECURITY  
UNITED STATES SENATE**

**WASHINGTON, DC**

**NOVEMBER 27, 2018**

## I. INTRODUCTION

Chairman Moran, Ranking Member Blumenthal, and members of the Subcommittee, the Federal Trade Commission (“FTC” or “Commission”) is pleased to appear before you today to discuss the FTC’s work to protect consumers and promote competition.<sup>1</sup>

The FTC is an independent agency with three main bureaus: the Bureau of Consumer Protection (“BCP”); the Bureau of Competition (“BC”); and the Bureau of Economics (“BE”), which supports both BCP and BC. The FTC 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 and other companies. We enforce the law across a range of sectors, including high technology and emerging industries. The FTC has a long history of bipartisanship and cooperation, and we work hard to maintain it.

The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act,<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>1</sup> This written statement presents the views of the Federal Trade Commission. The 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.

<sup>2</sup> 15 U.S.C. § 41 et seq.

<sup>3</sup> See <https://www.ftc.gov/enforcement/statutes>.

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 lawful business activity. The agency has a varied toolkit to advance its mission. For example, the Commission collects consumer complaints from the public and maintains one of the most extensive consumer protection complaint databases, Consumer Sentinel. The FTC and other federal, state, and local law enforcement agencies use these complaints in their law enforcement and policy efforts. The FTC also has rulemaking authority. In addition to the FTC's 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 its rules, including seeking public feedback, to ensure their continued efficacy. The FTC also educates consumers and businesses to 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.

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. This past September, the Commission began holding its *Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century*.<sup>4</sup> These multi-day, multi-part public hearings are exploring 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. To date, we have

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<sup>4</sup> FTC, *Hearings on Competition and Consumer Protection in the 21<sup>st</sup> 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 21<sup>st</sup> Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

heard from more than 200 panelists and received more than 700 public comments. This project is ongoing, and the FTC will continue to hold public hearings through early 2019.

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. 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 pursue its mandate of protecting consumers and competition in an ever-changing marketplace. Among other issues, the FTC works to protect privacy and data security, helps ensure that advertising claims to consumers are truthful and not misleading, addresses fraud across most sectors of the economy, and combats illegal robocalls.

The FTC's law enforcement orders prohibit defendants from engaging in further illegal activity, impose data security and other compliance obligations, and in some cases, ban defendants from engaging in certain conduct altogether. When possible, the FTC collects money to return to harmed consumers. During FY 2018, Commission actions resulted in over \$1.6 billion being returned to consumers. Specifically, the Commission returned more than \$83.3 million in redress

to consumers, and FTC orders—including in the *Volkswagen*,<sup>5</sup> *Amazon*,<sup>6</sup> and *NetSpend*<sup>7</sup> matters—required defendants to self-administer consumer refund programs worth more than \$1.6 billion. The FTC also collected civil penalties worth more than \$2.4 million pursuant to these orders in FY 2018. In addition, the Commission deposited an additional \$8.5 million into the U.S. Treasury.

#### **A. Protecting Consumer Privacy and Data Security**

The FTC has served as the primary federal agency charged with protecting consumer privacy, dating back to the 1970 enactment of the Fair Credit Reporting Act (“FCRA”).<sup>8</sup> The FTC has played a key role enforcing this law, which protects sensitive data used for credit, employment, insurance, and other decisions from disclosure to unauthorized persons.

Beginning in the mid-1990s, with the development of the Internet as a commercial medium, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace. At that time, the FTC began concentrating on children’s privacy, and in 1998, Congress enacted the Children’s Online Privacy Protection Act to address the unique privacy and safety risks created when young children—those under 13 years of age—access the Internet.<sup>9</sup> Since then, the Commission also has used Section 5 of the FTC Act,<sup>10</sup> which empowers the Commission to take action against deceptive or unfair commercial practices,<sup>11</sup> as its primary source of legal authority in the privacy and data security arena.

Year after year, privacy and data security top the list of consumer protection priorities at

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<sup>5</sup> *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>.

<sup>6</sup> *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>.

<sup>7</sup> *FTC v. NetSpend Corp.*, No. 1:16-cv-04203-AT (N.D. Ga. Apr. 10, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/netspend-corporation>.

<sup>8</sup> 15 U.S.C. § 1681.

<sup>9</sup> Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501-6506.

<sup>10</sup> 15 U.S.C. § 45.

<sup>11</sup> The Commission also enforces sector-specific statutes containing privacy and data security provisions, such as the Gramm-Leach-Bliley Act (“GLB Act”), Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified as amended in scattered sections of 12 and 15 U.S.C.), and the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. §§ 6501-6506.

the Federal Trade Commission. These issues are critical to consumers and businesses alike. Press reports about privacy practices 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.<sup>12</sup> 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.

These incidents are not a new phenomenon. In fact, we have been hearing about data breaches for well over a decade. These incidents fuel 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 consequently has challenged certain deceptive or unfair privacy and security practices.<sup>13</sup> The FTC’s privacy and data security program—which includes enforcement as well as consumer and business education—helps to promote a well-functioning market.

Privacy and data security will continue to be an enforcement priority at the Commission, and the agency will use every tool at its disposal to address consumer harm. Many of the FTC’s investigations and cases in this arena involve complex facts and technologies 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.

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<sup>12</sup> 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>.

<sup>13</sup> 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.

To date, the Commission has brought more than 60 cases alleging that companies failed to implement reasonable data security safeguards, as well as more than 60 general privacy cases.<sup>14</sup> 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.<sup>15</sup>

For example, the Commission recently gave final approval to 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.<sup>16</sup> 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. Under the final settlement, Uber must notify the FTC about future incidents and meet other order requirements relating to privacy or data security, with the threat of strong civil penalties if it fails to comply. And earlier this year, the Commission approved a settlement with PayPal, Inc. to resolve allegations that its Venmo peer-to-peer payment service misled consumers about their ability to control the privacy of their Venmo transactions and the extent to which their financial accounts were protected by “bank grade security systems.”<sup>17</sup> Among

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<sup>14</sup> See generally FTC, *Privacy & Data Security Update: 2017* (Jan. 2018), <https://www.ftc.gov/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives>.

<sup>15</sup> *Id.*

<sup>16</sup> See Press Release, FTC, *Federal Trade Commission Gives Final Approval to Settlement with Uber* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/federal-trade-commission-gives-final-approval-settlement-uber>. Uber suffered a second, larger breach of drivers’ and riders’ data in October-November 2016, and failed to disclose that breach to consumers or the FTC for more than a year, despite being the subject of an ongoing FTC investigation of its data security practices during that time.

<sup>17</sup> *PayPal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

other order requirements, Venmo must make certain disclosures to consumers or face the threat of civil penalties for the failure to do so.

The Commission takes seriously its obligation 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.<sup>18</sup> 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.<sup>19</sup>

Section 5, however, is not without limitations. 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 the acts or practices of these market participants often have serious implications for consumer privacy and data security. Finally, the FTC lacks broad APA rulemaking authority for data security generally.<sup>20</sup> The Commission continues to reiterate its longstanding bipartisan call for comprehensive data security legislation.

The Commission also must continue to prioritize, examine, and address privacy and data security with a fresh perspective. Under the umbrella of the *21<sup>st</sup> Century Hearings*, the Commission recently announced panels taking place over four days, specifically addressing consumer privacy and data security.<sup>21</sup> The Commission's remedial authority with respect to privacy and data security

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<sup>18</sup> *U.S. v. VTech Elec. 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>.

<sup>19</sup> In addition to law enforcement, the FTC also undertakes policy initiatives, such as its 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>.

<sup>20</sup> 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.

<sup>21</sup> *See* Press Release, FTC, *FTC Announces Sessions on Consumer Privacy and Data Security as Part of Its Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press->

will be a key topic in these panels, and the comments and discussions on these issues will be one source to inform the FTC’s enforcement and policy priorities. In addition, the Commission recently announced its fourth PrivacyCon, an annual event that reviews evolving privacy and data security issues.<sup>22</sup>

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 the promises made by Privacy Shield participants under its jurisdiction.<sup>23</sup> 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—bringing four cases in just the last two months—and will continue to do so when Privacy Shield participants fail to meet their legal obligations.<sup>24</sup> Chairman Simons recently participated, along with the Secretary of Commerce, in the second annual review of the functioning of the Privacy Shield framework with our European government counterparts. The Commission also will continue to work with the Department of Commerce, 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.

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[releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its](https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its).

<sup>22</sup> See Press Release, FTC, *FTC Announces PrivacyCon 2019 and Calls for Presentations* (Oct. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-privacycon-2019-calls-presentations>.

<sup>23</sup> See [www.privacyshield.gov](http://www.privacyshield.gov) and [www.ftc.gov/tips-advice/business-center/privacy-and-security/privacy-shield](https://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.

<sup>24</sup> See Press Release, FTC, *FTC Reaches Settlements with Four Companies That Falsely Claimed Participation in the EU-U.S. Privacy Shield* (Sept. 27, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-reaches-settlements-four-companies-falsely-claimed>.

Finally, the Commission urges Congress to consider enacting privacy legislation that would be enforced by the FTC. While the agency remains committed to vigorously enforcing existing privacy-related statutes, Congress may be able to craft federal legislation that would more seamlessly address consumers' legitimate concerns regarding the collection, use, and sharing of their data and provide greater clarity to businesses while retaining the flexibility required to foster competition and innovation. The Commission and its staff are prepared to share our expertise and assist with formulating appropriate legislation, as we did with the Children's Online Privacy Protection Act, CAN-SPAM, and the Gramm-Leach-Bliley Act. This process understandably will involve difficult value judgments and tradeoffs that are appropriately left to Congress. No matter the specific laws Congress enacts in the privacy and/or data security arenas, the Commission commits to using its extensive expertise and experience to enforce them vigorously, consistent with its ongoing and bipartisan emphasis on privacy and data security enforcement.

#### **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 well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by promoting the dissemination of accurate information. 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 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.<sup>25</sup> We have challenged bogus claims that treatments could cure, treat, or mitigate various serious diseases and ailments, including those affecting children and older consumers.<sup>26</sup> The Commission also has sued companies that claimed, allegedly without scientific evidence, that using their products could alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.<sup>27</sup> Finally, the Commission obtained an order barring a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.<sup>28</sup>

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.<sup>29</sup>

The FTC also protects consumers from illegal practices in the financial area. For example, last month, the Commission alleged that online student loan refinancer Social Finance made deceptive claims about the average savings members could achieve by refinancing—sometimes doubling the average savings.<sup>30</sup> The Commission also filed a complaint against Lending Club, an

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<sup>25</sup> See, e.g., *Telomerase Activation Sci., Inc. et al.*, No. C-4644 (Apr. 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>; *FTC v. Health Research Labs., Inc.*, No. 2:17-cv-00467 (D. Maine Nov. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>.

<sup>26</sup> *FTC v. Regenerative Med. Grp., Inc.*, No. 8:18-cv-01838 (C.D. Cal. filed Oct. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3062/regenerative-medicalgroup-inc>; *A&O Enters., Inc.*, No. 1723016 (Sept. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3016/ao-enterprises-doing-business-iv-bars-aaron-k-roberts-matter>.

<sup>27</sup> *FTC v. Catlin Enters., 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 issued letters to companies that appeared to be making questionable claims in order to sell addiction or withdrawal remedies. See Press Release, FTC, *FTC, FDA Warn Companies about Marketing and Selling Opioid Cessation Products* (Jan. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/01/ftc-fda-warn-companies-about-marketing-selling-opioid-cessation>.

<sup>28</sup> *FTC v. CellMark Biopharm*, 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>.

<sup>29</sup> FTC Consumer Blog, *Treatments and Cures*, <https://www.consumer.ftc.gov/topics/treatments-cures>.

<sup>30</sup> Press Release, FTC, *Online Student Loan Refinance Company SoFi Settles FTC Charges, Agrees to Stop Making False Claims About Loan Refinancing Savings* (Oct. 28, 2018), <https://www.ftc.gov/news-events/press->

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.<sup>31</sup>

### **C. Protecting Consumers from Fraud**

Fighting fraud is a major focus of the FTC’s law enforcement efforts. The Commission’s anti-fraud program tracks down and stops 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.<sup>32</sup> 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 such as gift cards or money transfers, or trick them into providing personal information. Fraudsters also target small businesses, sometimes cold-calling businesses to “collect” on invoices they do not owe.

In 2017, 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 dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.<sup>33</sup> The FTC brought actions to shut down these deceptive operations and also developed consumer education materials to help

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[releases/2018/10/online-student-loan-refinance-company-sofi-settles-ftc-charges](https://www.ftc.gov/news-events/press-releases/2018/10/online-student-loan-refinance-company-sofi-settles-ftc-charges).

<sup>31</sup> *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>.

<sup>32</sup> FTC Fiscal Year 2019 Congressional Budget Justification, <https://www.ftc.gov/reports/fy-2019-congressional-budget-justification>.

<sup>33</sup> Press Release, FTC, *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>.

consumers avoid falling victim to tech support scams in the first place.<sup>34</sup> This past June, the FTC announced “Operation Main Street,” an initiative to stop small business scams. The FTC, jointly with the offices of two U.S. Attorneys’ Offices, the New York Division of the U.S. Postal Inspection Service, eight state Attorneys General, and the Better Business Bureau, announced 24 actions targeting fraud aimed at small businesses and released new education materials to help small businesses identify and avoid potential scams.<sup>35</sup>

In September, the Commission brought an action against Sunkey Publishing, alleging that the lead generation operation falsely claimed to be affiliated with the military and promised to use consumers’ information only for military recruitment purposes. Instead, the FTC alleged that Sunkey used the information it collected to make millions of illegal telemarketing calls and sold the information to post-secondary schools.<sup>36</sup> This action is part of the FTC’s work in the area of lead generation, which is the process of identifying and cultivating individual consumers who are potentially interested in purchasing a product or service.<sup>37</sup>

The FTC 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 frauds involving cryptocurrencies—digital assets that use cryptography to secure or verify transactions.<sup>38</sup> The Commission has worked to educate consumers about cryptocurrencies and hold fraudsters

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<sup>34</sup> FTC Guidance, *Tech Support Scams* (July 2017), <https://www.consumer.ftc.gov/articles/0346-tech-support-scams#How>.

<sup>35</sup> Press Release, FTC, *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>.

<sup>36</sup> Press Release, FTC, *FTC Takes Action against the Operators of Copycat Military Websites* (Sept. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-takes-action-against-operators-copycat-military-websites>.

<sup>37</sup> See generally FTC Staff Perspective, “*Follow the Lead*” Workshop (Sept. 2016), [https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff\\_perspective\\_follow\\_the\\_lead\\_workshop.pdf](https://www.ftc.gov/system/files/documents/reports/staff-perspective-follow-lead/staff_perspective_follow_the_lead_workshop.pdf).

<sup>38</sup> See, e.g., FTC, *What to Know About Cryptocurrency* (Oct. 2018), <https://www.consumer.ftc.gov/articles/what-know-about-cryptocurrency>.

accountable.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

In addition to targeting scammers, the FTC also brings actions against companies that facilitate fraud, often by ignoring red flags associated with fraudulent transactions. Money transfers are a preferred method of payment for fraudsters because money sent through money transfer systems can be retrieved quickly at locations all over the world, and once retrieved, the money is all but impossible to recover. Earlier this month, MoneyGram agreed to pay \$125 million to settle allegations that the company failed to take steps required under a 2009 FTC order to crack down on fraudulent money transfers that cost U.S. consumers millions of dollars, and also to resolve allegations that the company violated a 2012 deferred prosecution agreement with the U.S. Department of Justice (“DOJ”).<sup>42</sup>

#### **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 2018, the FTC

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<sup>39</sup> See, e.g., FTC Consumer Blog, *Know the risks before investing in cryptocurrencies*, <https://www.ftc.gov/news-events/blogs/business-blog/2018/02/know-risks-investing-cryptocurrencies>; FTC Consumer Blog, *Protecting your devices from cryptojacking*, <https://www.consumer.ftc.gov/blog/2018/06/protecting-your-devices-cryptojacking>.

<sup>40</sup> *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>.

<sup>41</sup> FTC Workshop, *Decrypting Cryptocurrency Scams* (June 25, 2018), <https://www.ftc.gov/news-events/events-calendar/2018/06/decrypting-cryptocurrency-scams>.

<sup>42</sup> Press Release, FTC, *MoneyGram Agrees to Pay \$125 Million to Settle Allegations that the Company Violated the FTC’s 2009 Order and Breached a 2012 DOJ Deferred Prosecution Agreement* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/moneygram-agrees-pay-125-million-settle-allegations-company>; see also *FTC v. The Western Union Co.*, No. 1:17-cv-00110 (M.D. Pa. Jan. 19, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/122-3208/western-union-company>.

received more than 3.7 million robocall complaints.<sup>43</sup> The FTC has used many methods to fight these illegal calls, including 136 enforcement actions to date.<sup>44</sup> 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 phenomenon 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.<sup>45</sup> 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.<sup>46</sup>

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<sup>43</sup> 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>.

<sup>44</sup> *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>. In August, 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>.

<sup>45</sup> 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](https://www.ftc.gov/sites/default/files/documents/public_events/robocalls-all-rage-ftc-summit/robocallsummittranscript.pdf).

<sup>46</sup> 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

Recognizing that law enforcement, while critical, is not enough to solve the problem of illegal calls, the FTC has taken steps to spur the marketplace to develop technological 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.<sup>47</sup> The FTC’s challenges contributed to a shift 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.<sup>48</sup>

In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls. For example, this spring the FTC and the Federal Communications Commission (“FCC”) co-hosted a Joint Policy Forum on illegal robocalls to discuss the regulatory and enforcement challenges posed by this activity, as well as a public expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls that consumers receive.<sup>49</sup> As described in more detail in the International Cooperation section, the Commission also participated in several international initiatives focusing on robocalls and other calling abuses.<sup>50</sup>

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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>.

<sup>47</sup> The first challenge, in 2013, called upon the public to develop a consumer-facing solution to block 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 Press Release, FTC, *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 Press Release, FTC, *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>; Press Release, FTC, *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>.

<sup>48</sup> See <https://www.consumer.ftc.gov/features/how-stop-unwanted-calls>.

<sup>49</sup> Press Release, FTC, *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](https://www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls); Press Release, FTC, *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](https://www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-seek-exhibitors-expo-featuring-technologies-block-illegal).

<sup>50</sup> See, e.g., Memorandum of Understanding Among Public Authorities of the Unsolicited Communications

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 may be beyond the Commission's reach because of the common carrier 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. 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 attempt to use their purported status as common carriers to shield themselves from FTC enforcement.<sup>51</sup>

#### **E. Consumer and Business 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 the FTC's website, the media, and partner organizations that disseminate consumer information on the agency's behalf. The FTC delivers actionable, practical, plain-language guidance on dozens of issues, and updates its consumer education materials whenever it has new information to share. The FTC disseminates these tips through articles, blog posts, social media, infographics, videos, audio, and campaigns. For example, in response to the

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Enforcement Network Pertaining to Unlawful Telecommunications and SPAM (May 2016), <https://www.ftc.gov/policy/cooperation-agreements/international-unlawful-telecommunications-spam-enforcement-cooperation>; Press Release, FTC, *FTC Signs Memorandum of Understanding With Canadian Agency To Strengthen Cooperation on Do Not Call, Spam Enforcement* (Mar. 24, 2016), <https://www.ftc.gov/news-events/press-releases/2016/03/ftc-signs-memorandum-understanding-canadian-agency-strengthen>

<sup>51</sup> 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>.

enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act,<sup>52</sup> which allows consumers to freeze their credit and place one-year fraud alerts for free, the Commission updated its IdentityTheft.gov website to help consumers take advantage of the new protections.<sup>53</sup>

Among the key audiences served by the FTC are older adults, as described in a recent report to Congress that details how older adults experience scams.<sup>54</sup> For example, according to the FTC's 2017 data, people 60 and over are much more likely to report fraud than people in their 20s, but far less likely to say they lost money.<sup>55</sup> However, when people 80 and over report losing money to a scam, they lose much more than do their younger counterparts.<sup>56</sup> As a response to older adults' experience with scams, the FTC created its Pass It On campaign,<sup>57</sup> which gives older adults the information they need to start a conversation about scams with family and friends.

The Commission also works to provide companies with resources on a variety of issues that affect businesses. Just last month, we released our "Cybersecurity for Small Business" campaign, based on concerns we heard from small businesses. The campaign discusses a dozen need-to-know topics, such as "Cybersecurity Basics," "Tech Support Scams," and "Hiring a Web Host."<sup>58</sup>

### **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 wallets, such as health care, consumer

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<sup>52</sup> Pub. L. No: 115-174.

<sup>53</sup> See, Press Release, FTC, *Starting Today, New Federal Law Allows Consumers to Place Free Credit Freezes and Yearlong Fraud Alerts* (Sept. 21, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/starting-today-new-law-allows-consumers-place-free-credit-freezes>.

<sup>54</sup> FTC Report, *Protecting Older Consumers: 2017-2018* (Oct. 2018), <https://www.ftc.gov/reports/protecting-older-consumers-2017-2018-report-congress-federal-trade-commission>.

<sup>55</sup> *Id.* at 5.

<sup>56</sup> *Id.* at 6.

<sup>57</sup> See [www.ftc.gov/PassItOn](http://www.ftc.gov/PassItOn) and [www.ftc.gov/Pasalo](http://www.ftc.gov/Pasalo). The campaign has distributed more than 9.5 million print publications since its creation, including 2.2 million in fiscal year 2018.

<sup>58</sup> See *Cybersecurity Resources for Your Small Business* (Oct. 18, 2018), <https://www.ftc.gov/news-events/blogs/business-blog/2018/10/cybersecurity-resources-your-small-business>.

products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the Department of Justice.

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 observe the statutorily prescribed waiting period before consummating their transactions. Premerger filings under the Hart-Scott-Rodino ("HSR") Act have increased steadily since FY 2013. In FY 2017, the antitrust agencies received over 2,000 HSR filings for the first time since 2007, bringing filings in the past fiscal year to the average over the past 20 years.<sup>59</sup> The vast majority of reported transactions do not raise competitive concerns and the agencies clear those non-problematic transactions expeditiously. But when the evidence gives the Commission reason to believe that a proposed merger likely would be anticompetitive, it does not hesitate to intervene. Since the beginning of FY 2017, the Commission has challenged 45 mergers after the evidence showed that they would likely harm consumers. Although many of these cases were resolved through divestiture settlements, in FY 2018 alone, the Commission voted to initiate litigation to block five mergers, each of which has required a significant commitment of resources. Three of the challenges ended successfully when the parties abandoned the transactions before the district court could issue a decision,<sup>60</sup> while the other two are still being litigated.<sup>61</sup> In two of these matters, a

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<sup>59</sup> 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>.

<sup>60</sup> *FTC v. DraftKings, Inc.*, No. 17-cv-01195 (D.D.C. June 19, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draftkings-fanduel-ftc-state-california-district-columbia-v>; Press Release, FTC, *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>.

<sup>61</sup> *Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>; *Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>.

federal district court granted the Commission's motion for a preliminary injunction pending an administrative trial, and issued a decision resolving important issues of merger law.<sup>62</sup>

One increasing challenge for the Commission in litigating competition cases is the continuing need 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.<sup>63</sup> 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.*,<sup>64</sup> 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,<sup>65</sup> and other manufacturers have agreed to abandon the practice.<sup>66</sup> In

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<sup>62</sup> *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>; *FTC v. Tronox, Ltd.*, No. 1:18-cv-01622 (D.D.C. Jul. 10, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronox-limited-et-al-ftc-v>.

<sup>63</sup> 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>; *In re Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

<sup>64</sup> *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013).

<sup>65</sup> Press Release, FTC, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains 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>.

addition, the Commission has challenged other anticompetitive conduct by drug manufacturers, including the abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.<sup>67</sup> For example, a federal court recently ruled that AbbVie Inc. used sham litigation illegally to maintain its monopoly over the testosterone replacement drug Androgel, and ordered \$493.7 million in monetary relief to consumers who were overcharged for Androgel as a result of AbbVie's conduct.<sup>68</sup> 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.<sup>69</sup>

The Commission also follows closely developments in the high-technology sector. From smart appliances and smart cars to mobile devices and artificial intelligence, the widespread adoption of new technologies is not only changing the way we live, but also the way firms operate. Although many of these changes may offer consumer benefits, they also raise complex 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—not only understand the current and developing business models, but also ensure that

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<sup>66</sup> 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>; 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>.

<sup>67</sup> *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>.

<sup>68</sup> 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>.

<sup>69</sup> 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](https://www.ftc.gov/system/files/documents/cases/stipulated_order_for_permanent_injunction_mallinckrodt.pdf).

companies in this sector abide by the same rules of competitive markets that apply to any company.<sup>70</sup>

In addition to competition enforcement, the FTC promotes competition principles in advocacy comments to state lawmakers and regulators, as well as to its sister federal agencies,<sup>71</sup> and in *amicus* briefs filed in federal courts considering important areas of antitrust law.<sup>72</sup> 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.<sup>73</sup> The Commission continues to conduct merger retrospectives, examining prior merger enforcement decisions to assess their impact on competition and consumers, and plans to broaden this effort going forward. Similarly, through the series of hearings described above, the Commission is devoting significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition issues.<sup>74</sup>

#### **IV. INTERNATIONAL COOPERATION**

In addition to its domestic programs, the FTC engages in significant international work, much of which relies on the expiring SAFE WEB Act, which the Commission urges Congress to reauthorize. 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 ensure close collaboration on cross-border cases and convergence toward sound

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<sup>70</sup> See, e.g., *1-800 Contacts, Inc.*, No. 9372 (Nov. 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0200/1-800-contacts-inc-matter> (Commissioner Phillips dissented in this matter); *DraftKings, Inc./FanDuel Ltd.*, No. 9375 (July 14, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draft-kings-inc-fanduel-limited>.

<sup>71</sup> See generally <https://www.ftc.gov/policy/advocacy>.

<sup>72</sup> Amicus briefs are posted at <https://www.ftc.gov/policy/advocacy/amicus-briefs>.

<sup>73</sup> 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](https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf).

<sup>74</sup> 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](https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf).

competition policies and procedures.<sup>75</sup> The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible 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 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.<sup>76</sup>

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 43 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. Just last month, for example, the FTC organized an Unsolicited Communications Enforcement Network conference with 11 foreign enforcement agencies (plus the FCC) to develop international approaches on robocalls, tech support scams, and other online abuses.

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<sup>75</sup> 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.

<sup>76</sup> 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.<sup>77</sup> Passed in 2006 and renewed in 2012, this Act strengthens the FTC's ability to work on cases with an international dimension. 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 U.S. SAFE WEB Act has been a remarkable success. The FTC has responded to 130 SAFE WEB information sharing requests from more than 30 foreign enforcement agencies. The FTC has issued more than 115 civil investigative demands in more than 50 investigations on behalf of foreign agencies, both civil and criminal. The Commission 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 Competition Bureau.<sup>78</sup> The FTC's foreign law enforcement partners similarly have assisted FTC enforcement actions. 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.<sup>79</sup> In the privacy arena, the FTC used key provisions of the U.S. SAFE WEB Act to collaborate successfully with the Office of the Privacy Commissioner of Canada in the FTC's first case involving Internet-connected toys. Specifically, in 2018, the FTC

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<sup>77</sup> 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.).

<sup>78</sup> Press Release, Competition Bureau Canada, *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>.

<sup>79</sup> Press Release, FTC, *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>.

brought an enforcement action against V-Tech, a Hong Kong-based electronics toy manufacturer, alleging COPPA violations.<sup>80</sup> The Act sunsets in 2020: the Commission requests that Congress reauthorize this important authority and eliminate the sunset provision.

The Act also underpins the FTC's ability to participate in cross-border cooperation arrangements, including the EU-U.S. Privacy Shield Framework, which facilitates billions of transatlantic data flows.<sup>81</sup> Critically, the Act also expressly confirms the FTC's authority both to challenge practices occurring in other countries that harm U.S. consumers, a common scenario in cases involving fraud, and to challenge U.S. business practices harming foreign consumers, such as Privacy Shield violations.

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 declarations and commitments in these programs, bringing cases as violations of Section 5 of the FTC Act.<sup>82</sup> The FTC also works closely

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<sup>80</sup> *U.S. v. VTech Elec. 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>.

<sup>81</sup> 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>.

<sup>82</sup> See, e.g., *ReadyTech Corp.*, No. C-4659 (Oct. 25, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/182->

with agencies developing and implementing new privacy and data security laws around the world, including Asia, Africa, and Latin America. And the FTC convenes discussions on important and emerging privacy issues. For example, just two weeks ago, senior officials from the agency-conducted meetings with government officials and other stakeholders in India, together with partners from the U.K. and Japan, on India's proposed data security and privacy legislation.

## **VII. CONCLUSION**

The FTC remains committed to marshalling its resources efficiently in order to effectively protect consumers and promote 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.

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[3100/readytech-corporation-matter](https://www.ftc.gov/enforcement/cases-proceedings/172-3172/md7-llc); *Md7, LLC*, No. C-4629 (Nov. 29, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/172-3172/md7-llc>; *Tru Commc'n, 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/162-3251/spychatter-inc>.