

**PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION**

Before the

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

UNITED STATES SENATE

WASHINGTON, DC

MAY 7, 2019

I. INTRODUCTION

Chairman Kennedy, Ranking Member Coons, and members of the Subcommittee, I am Joe Simons, Chairman of the Federal Trade Commission (“FTC” or “Commission”), and I am pleased to appear before you today to testify about the Commission’s FY 2020 appropriations request and its work to protect consumers and promote competition.¹

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 includes privacy and data security, consumer fraud, mergers and acquisitions, and anticompetitive tactics by pharmaceutical and other companies. We enforce the law across a range of sectors, including health care, 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,² 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 other responsibilities under more than 75 laws.³ The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. 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.

¹ This written statement presents the views of the Federal Trade Commission. My oral statement and responses to questions are my own and do not necessarily reflect the views of the Commission or any other Commissioner.

² 15 U.S.C. § 41 *et seq.*

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

The FTC also investigates and prosecutes those engaging in unfair or deceptive acts or practices, 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.

To complement these enforcement and public education 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. Last fall, the Commission began its *Hearings on Competition and Consumer Protection in the 21st Century*.⁴ This extensive series of public hearings is 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 heard from more than 350 panelists and received more than 850 public comments. The formal hearings will conclude shortly, and we will be accepting public comments through at least the end

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

of June. These hearings underscore the unique role that the FTC plays in the development of sound competition and consumer protection policy.

This testimony provides a brief overview of the FTC's budget and resources. It also discusses 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. BUDGET AND RESOURCES

In FY 2019, the FTC's enacted budget is \$309.7 million and 1,140 FTEs. For FY 2020, the FTC is requesting \$312.3 million and 1,140 FTEs. The additional \$2.6 million requested is for expert witnesses and IT modernization. Expert witness contracts are an increasing need in light of the growing number of complex investigations and litigation in both competition and consumer protection matters. As a result, we face significantly higher costs to obtain the kinds of outside experts that we need to support our cases. For example, in competition cases, we require experts to opine on complex issues including: proper product and geographic market definitions; anticompetitive effects resulting from a merger or anticompetitive conduct; efficacy of economic models used to evaluate various antitrust issues; and potential efficiencies associated with any merger or challenged business practice. Consumer protection cases often require experts to opine on scientific, data security and privacy, and advertising issues. Experts also are sometimes called upon to assist with calculating appropriate monetary relief. It is critical that the FTC have sufficient resources to support expert work in litigation, particularly in cases against large, well-financed defendants.

In addition to the growing need for experts, the agency also requires additional resources to modernize our IT infrastructure. In support of the IT modernization program, the FTC requests

funding to update the Commission’s portfolio of direct mission applications, as outlined in the agency’s Information Resources Management (“IRM”) Strategic Plan.⁵ These applications support operations that are necessary for the successful execution of the FTC’s mission, such as the Hart-Scott-Rodino (“HSR”) Premerger Filing Program and the collection and management of consumer redress funds. The requested funding would support the development of a roadmap for modernization of all direct mission applications and the initial migration of those currently managed in FTC’s on-premise data center to cloud platforms. The funding would also be used to improve productivity through process reengineering and increased integration with other technology and systems used by FTC staff and the public.

In addition to the technology benefits, these additional resources would dramatically improve our business operations. Notably, many of the agency’s processes still involve manual paperwork and employee intervention to complete an activity. For example, the current HSR premerger filing process requires a significant amount of time-consuming manual input from the public, FTC employees, and other federal agencies. The HSR premerger filing process starts when a merging party submits a hard copy of the HSR form, called an HSR filing, to the FTC and Department of Justice (“DOJ”). The entire filing, including attachments, often runs to hundreds of pages. After receiving the HSR filing, FTC staff must manually enter the information provided in the filing into the premerger software. After all this information is inputted manually, the software tracks the status of the filing through the review process. A modernized version of the premerger software would allow filers to submit premerger filings online and track the filing through the entire premerger review process. This would significantly decrease the burden on filers by allowing them to submit filings online and would eliminate the manual steps taken by the FTC and

⁵ FTC Information Resource Management (IRM) Strategic Plan, for FY2019-2022. The IRM provides strategic direction for the use of IT resources that support the agency’s evolving mission and business needs.

other federal agencies. Projects such as the digitalization of the HSR Premerger Filing would also directly support FTC's compliance with the recently enacted 21st Century IDEA Act.

The FTC's budget request assumes that total offsetting collections from HSR filing fees and Do Not Call fees will provide the FTC with \$151 million in FY 2020. As a result, in order to meet the requested \$312.3 million amount in FY 2020, an estimated \$161.3 million in direct appropriations would be required.

The agency continues to use its resources effectively and efficiently on behalf of American consumers. When possible, the agency collects money to return to harmed consumers.

During FY 2018 alone, the agency disbursed \$601 million to claimants, third party administrators, and the Treasury. The agency returned over \$83 million in redress to consumers and deposited over \$10 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. Additionally, Commission actions required defendants to self-administer refund programs worth more than \$1.6 billion during FY 2018.

The agency estimates how much money it has saved consumers through law enforcement in comparison to the FTC's costs. In recent years, the agency saved consumers on average \$38.90 for every \$1 of resources devoted to the consumer protection program; \$50.16 for every \$1 of resources devoted to the merger program; and \$40.12 for every \$1 of resources devoted to the nonmerger antitrust enforcement program.

III. CONSUMER PROTECTION MISSION

As the nation's primary consumer protection agency, the FTC has a broad mandate to protect consumers from unfair and deceptive practices in the marketplace, including fraud. We do this by, among other things, pursuing law enforcement actions to stop and deter 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. 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 other compliance obligations, and in some cases, ban defendants from engaging in certain conduct altogether. Where appropriate, 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 the FTC resolved matters—including in the *Volkswagen*,⁶ *Amazon*,⁷ and *NetSpend*⁸ matters—that 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 and forwarded an additional \$8.5 million to the U.S. Treasury in FY 2018.

A. Protecting Consumer Privacy and Data Security

Since the enactment of the Fair Credit Reporting Act (“FCRA”)⁹ in 1970, the FTC has served as the chief federal agency charged with protecting consumer privacy. With the development of the internet as a commercial medium in the 1990s, the FTC expanded its focus on privacy to reflect the growing collection, use, and sharing of consumer data in the commercial marketplace.

The Commission’s primary source of legal authority in the privacy and data security space

⁶ *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>.

⁷ *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>.

⁸ *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>.

⁹ 15 U.S.C. § 1681. Among other things, the FCRA prohibits the unauthorized disclosure of sensitive data used for credit, employment, and other decisions.

is Section 5 of the FTC Act, which prohibits deceptive or unfair commercial practices.¹⁰ Under Section 5 and other authorities granted by Congress, the FTC has aggressively pursued privacy and data security cases in myriad areas, including children’s privacy, financial privacy, health privacy, and the Internet of Things.¹¹ To date, the Commission has brought more than 65 cases alleging that companies failed to implement reasonable data security safeguards, and more than 60 general privacy cases.¹²

Section 5, however, is not without its limitations. For example, Section 5 does not allow the Commission to seek civil penalties for the first offense. It also excludes non-profits and common carriers from the Commission’s authority, even when the acts or practices of these market participants have serious implications for consumer privacy and data security. To better equip the Commission to meet its statutory mission to protect consumers, we urge Congress to enact privacy and data security legislation, enforceable by the FTC, which grants the agency civil penalty authority, targeted APA rulemaking authority, and jurisdiction over non-profits and common carriers.¹³

While the Commission believes new authority could be very beneficial for American consumers, we will continue to use every tool currently at our disposal to address consumer harm. For example, the Commission protects children’s privacy online by enforcing the Children's Online Privacy Protection Act (COPPA). We recently alleged that Unixiz, doing business as

¹⁰ 15 U.S.C. § 45. 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.

¹¹ See, e.g., FTC, PRIVACY & DATA SECURITY UPDATE: 2018 (March 2019), <https://www.ftc.gov/system/files/documents/reports/privacy-data-security-update-2018/2018-privacy-data-security-report-508.pdf>.

¹² *Id.*

¹³ Commissioner Phillips supports congressional efforts to consider consumer data privacy legislation. He believes legislation should be based on harms that Congress agrees warrant a remedy, and that tools like penalties and rulemaking should be calibrated carefully to address those harms. Commissioner Phillips believes Congress should also give appropriate consideration to the trade-offs involved in new regulation, and, with regard to rulemaking, reserve to itself fundamental value judgments appropriately made by the legislature. Finally, Commissioner Phillips believes data security legislation is a critical step Congress should also take to protect consumer privacy.

i-Dressup.com, violated the COPPA Rule by failing to obtain parental consent prior to collecting personal information from children, as well as failing to protect children's personal information.¹⁴ The FTC's complaint also alleged that the company stored and transmitted users' personal information in plain text, failed to implement an intrusion detection and prevention system, and failed to monitor for potential security incidents. As a result, a hacker accessed the personal information of approximately 2.1 million users, including 245,000 users under the age of 13. And in March, the FTC announced a settlement with the operators of the popular video social networking app Musical.ly, now known as Tik Tok, for COPPA violations.¹⁵ The FTC alleged that the company collected children's personal information online without first obtaining parental consent. Because COPPA allows the Commission to seek civil penalties for its violations, the defendants agreed to pay a \$5.7 million dollar civil penalty, the largest ever obtained by the Commission in a COPPA case.

Further examples of data security enforcement include the Commission's settlement with Uber Technologies over the company's alleged failure to reasonably secure sensitive consumer data stored in the cloud.¹⁶ 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. During the pendency of that investigation, 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. Among other things, the final order prohibits Uber from misrepresenting how it

¹⁴ *U.S. v. Unixiz, Inc. d/b/a i-Dressup.com et al.*, No. 5:19-cv-02222 (N.D. Cal. Apr. 24, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3002/unixiz-inc-doing-business-i-dressupcom>.

¹⁵ *U.S. v. Musical.ly, et al.*, No. 2:19-cv-1439 (C.D. Ca. Mar. 27, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3004/musically-inc>.

¹⁶ See FTC Press Release, *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>.

monitors internal access to consumers’ personal information and the extent to which it protects personal information, with the threat of strong civil penalties if it fails to comply.¹⁷ And in May 2018, the Commission resolved allegations that PayPal’s 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.”¹⁸

Just this past month, the Commission settled with an online rewards website, Clixsense.com, for its alleged failure to take appropriate steps to secure consumers’ data.¹⁹ The FTC alleged that the company’s inadequate security—including its storage of personal information in plain text and its failure to perform vulnerability and penetration testing—allowed hackers to gain access to the company’s network through a browser extension downloaded by the company. These failures resulted in hackers gaining access to personal information regarding 6.6 million consumers, over 500,000 of whom were U.S. consumers.

In addition to its enforcement efforts in the privacy and data security areas, the Commission seeks to improve agency decision-making through its policy initiatives. Last fall, for example, the Commission held four days of panels that specifically addressed consumer privacy and data security.²⁰ The Commission also announced its fourth PrivacyCon, which will take place on June 27, an annual event that explores evolving privacy and data security research.²¹

The Commission also is empowered to conduct industry studies related to privacy and data

¹⁷ As discussed above, because the FTC does not have civil penalty authority under Section 5, it could not require Uber to pay a civil penalty in the first instance.

¹⁸ *PayPal, Inc.*, No. C-4651 (May 24, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/162-3102/paypal-inc-matter>.

¹⁹ *James. V. Grago, Jr. also d/b/a ClixSense.com*, Matter No. 1723003 (Apr. 24, 2019) (proposed consent order), <https://www.ftc.gov/enforcement/cases-proceedings/172-3003/james-v-grago-jr-doing-business-clixsensecom>.

²⁰ See FTC Press Release, *FTC Announces Sessions on Consumer Privacy and Data Security as Part of Its Hearings on Competition and Consumer Protection in the 21st Century* (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-announces-sessions-consumer-privacy-data-security-part-its>.

²¹ See FTC Press Release, *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>.

security under Section 6(b) of the FTC Act.²² In March, we issued 6(b) orders to several internet service providers to evaluate their privacy practices.²³ As we have done in the past, we will use the information we learn from this study to better inform our policy and enforcement work.

The Commission continues to work closely with our law enforcement partners in the European Union (“EU”) and its member states to ensure the success of the EU-U.S. Privacy Shield framework. Under the EU’s General Data Protection Regulation (“GDPR”), companies are required to meet certain data protection requirements in order to transfer consumer data from the EU to other jurisdictions. Privacy Shield—a voluntary mechanism that companies can use to comply with the GDPR when transferring data from Europe to the United States and which facilitates billions of dollars in transatlantic data flows—is enforced by the FTC with respect to those participants under its jurisdiction.²⁴

Last fall, for example, the Commission announced settlements with four companies that we alleged had falsely claimed Privacy Shield certification.²⁵ And in September 2018, Chairman Simons, along with the Secretary of Commerce and our European counterparts, participated in the second annual review of the Privacy Shield framework, culminating in a European Commission recommendation for continued FTC enforcement in the Privacy Shield area.²⁶ Our Privacy Shield approach is built on four pillars: referrals from the Department of Commerce; priority consideration

²² 15 U.S.C. § 46(b).

²³ See FTC Press Release, *FTC Seeks to Examine the Privacy Practices of Broadband Providers* (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers>.

²⁴ See www.privacyshield.gov and 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.

²⁵ See FTC Press Release, *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>.

²⁶ See *Report from the Commission to the European Parliament and the Council on the Second Annual Review of the Functioning of the EU-U.S. Privacy Shield*, COM(2018) 860 final, https://ec.europa.eu/info/sites/info/files/report_on_the_second_annual_review_of_the_eu-us_privacy_shield_2018.pdf.

of referrals from the European Union; checking for Privacy Shield violations as part of every privacy investigation; and proactive monitoring of Privacy Shield participants.

Finally, many of the FTC's privacy and data security investigations and cases 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.

B. 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. In 2018, imposter scams became the top consumer fraud complaint, in part due to the rise in reports about government imposter scams.²⁷ Fraudsters falsely claiming to be government agents (including the Social Security Administration, IRS and even the FTC), family members, or well-known tech companies contact consumers. These fraudsters 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. Many of these scams target older Americans.

In response to the rise in imposter complaints, the FTC has filed multiple cases against defendants who deceptively pose as the government or well-known tech companies. For example, the FTC recently brought two actions against defendants for falsely claiming affiliations with the federal government. The Commission charged Sunkey Publishing with using copycat military recruitment websites to trick consumers seeking military careers into providing their personal

²⁷ FTC Press Release, *Imposter Scams Top Complaints Made to FTC in 2018* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/imposter-scams-top-complaints-made-ftc-2018>.

information; according to the complaint, Sunkey then sold the information to post-secondary schools as part of its lead generation business.²⁸ The Commission's action against American Immigration Center stopped an alleged scheme using deceptive websites and advertising that falsely implied an affiliation with the U.S. Citizenship and Immigration Services to dupe legal residents trying to renew their green cards or apply for naturalization.²⁹

The Commission also helps older Americans protect themselves from fraud. Last month, the FTC joined federal, state, and international law enforcement partners in announcing a nationwide and international crackdown on elder fraud schemes with a particular focus on technical support scams. Technical support scams dupe consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs. As part of that initiative, the FTC filed suit against technical support operator Elite IT Partners,³⁰ developed new consumer education materials to help consumers avoid falling victim to these scams,³¹ and released new complaint data that illustrates the disproportionate effect these scams have on older adults.³²

Over the last year, the FTC has targeted business opportunity scams, filing numerous actions against defendants who promise consumers a legitimate opportunity to earn money if consumers will pay for defendants' "coaching" services. In reality, the "coaching" services provide no value to consumers and are typically nothing more than a handful of training videos and

²⁸ FTC 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>.

²⁹ FTC Press Release, *American Immigration Center Settles with FTC on Government Imposter Allegations* (Oct. 16, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/american-immigration-center-settles-ftc-government-imposter>. The court entered the Stipulated Order for Permanent Injunction and Monetary Judgment against the defendants on December 7, 2018.

³⁰ FTC Press Release, *FTC Halts Tech Support Scam as Part of Major Initiative Focused on Older Adults Hit Hardest by These Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-halts-tech-support-scam-part-major-initiative-focused-older>.

³¹ See How to Spot, Avoid and Report Tech Support Scams, <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams>.

³² See FTC Consumer Protection Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams>.

documents with generic information. In *Digital Altitude*, the Commission brought an action against defendants who allegedly defrauded consumers out of millions of dollars—some paying more than \$50,000—by promising of individualized coaching on how to run an online business.³³ The Commission also brought separate actions against defendants in *FBA Stores*³⁴ and, with the Attorney General of Minnesota, against defendants in *Sellers Playbook*³⁵ based on allegations that the defendants falsely claimed they could teach consumers “the secrets for making money on Amazon.” The Commission’s actions shut down three large operations that resulted in over \$100 million in losses to consumers.

The Commission’s fraud cases also extend to sprawling international scams. The Commission charged the defendants in *MOBE*—competitors of *Digital Altitude*—for running an international coaching scam that the FTC alleged took more than \$300 million from thousands of American consumers.³⁶ The Commission also recently filed an action against defendants in *Sanctuary Belize*, a massive land sale scam that allegedly bilked over \$100 million from consumers, largely retirees. According to the complaint, recidivist Andris Pukke perpetrated an international scheme selling lots in a development in remote southern Belize with promises that he never intended to keep. The FTC shut down the enterprise by obtaining a temporary restraining order and preliminary injunction, and continues to litigate the matter.³⁷

³³ FTC Press Release, *FTC Obtains Court Order Halting Business Coaching Scheme* (Feb. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/02/ftc-obtains-court-order-halting-business-coaching-scheme>.

³⁴ FTC Press Release, *FTC Action Halts a Large Deceptive Business Opportunity Scheme* (Mar. 23, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-action-halts-large-deceptive-business-opportunity-scheme>.

³⁵ FTC Press Release, *FTC and State of Minnesota Halt Sellers Playbook’s Get Rich Scheme* (Aug. 6, 2018), <https://www.ftc.gov/news-events/press-releases/2018/08/ftc-state-minnesota-halt-sellers-playbooks-get-rich-scheme>.

³⁶ FTC Press Release, *FTC Action Halts MOBE, a Massive Internet Business Coaching Scheme* (June 11, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-action-halts-mobe-massive-internet-business-coaching-scheme>.

³⁷ FTC Press Release, *At FTC’s Request, Court Halts Massive “Sanctuary Belize” Real Estate Investment Scam* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate>.

The FTC frequently works with other law enforcement agencies to tackle widespread fraud. In July 2018, the FTC launched “Operation Donate with Honor,” a coordinated effort to target fraudulent and deceptive fundraising for military and veterans’ causes that has resulted in over 100 law enforcement actions.³⁸ As part of that initiative, the FTC has announced four cases with several state Attorneys General to shut down sham charity operations that were using consumers’ generous donations for private benefits and spent very little of the donated funds on the charitable programs.³⁹

The FTC strives to stay ahead of scammers by analyzing Sentinel complaints to help raise public awareness about fraud. In October 2018, the FTC launched its *Consumer Protection Data Spotlight* series to alert law enforcers, industry, and the public about growing threats and important patterns identified in Sentinel data. The *Spotlight* explores data over time, showing how scammers change tactics and catch consumers off guard.⁴⁰ In addition, the FTC is making Sentinel data more accessible to state and local governments, the media, academics, and the public-at-large by publishing interactive dashboards that enable people to see what kind of fraud is affecting their

³⁸ FTC Press Release, *Operation Donate with Honor: Law Enforcers Unite to Challenge Deceptive Fundraising* (Jul. 19, 2018), <https://www.ftc.gov/news-events/blogs/business-blog/2018/07/operation-donate-honor-law-enforcers-unite-challenge>. This initiative included 54 Attorneys General from all 50 states, the District of Columbia, American Samoa, Guam, and Puerto Rico, and 16 state agencies that oversee charities.

³⁹ *FTC & State of Missouri v. Disabled Police and Sheriffs Foundation, Inc., et al.*, No. 4:19-cv-00667 (E.D. Mo. Mar. 28, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3128/disabled-police-sheriffs-foundation-inc>; *FTC & State of Florida Office of the Attorney General v. American Veterans Foundation, Inc., et al.*, No. 8:18-cv-00744 (M.D. Fla. Mar. 28, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3163/american-veterans-foundation-inc>; *FTC et al. v. Help the Vets, Inc., et al.*, No. 6:18-cv-1153-Orl-41KRS (M.D. Fla. July 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3159/help-vets-inc>; *FTC v. Travis Deloy Peterson*, No. 4:18-00049-DN (D. Utah July 16, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/182-3049/veterans-america>.

⁴⁰ The first *Spotlight* identified a sharp rise in gift cards—particularly iTunes and Google Play cards—as a payment method for scams. See FTC Consumer Protection Data Spotlight, *Scammers Increasingly Demand Payment by Gift Card* (Oct. 2018), <https://www.ftc.gov/news-events/blogs/data-spotlight/2018/10/scammers-increasingly-demand-payment-gift-card>. Most recently, the Spotlight pointed to the dramatic increase in reports about imposters passing themselves off as Social Security Administration officials, which is happening just as reports about IRS imposter scams are waning. See FTC Consumer Protection Data Spotlight, *Growing Wave of Social Security Imposters Overtakes IRS Scam* (Apr. 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/04/growing-wave-social-security-imposters-overtakes-irs-scam>.

state or large metropolitan area.⁴¹

C. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has long been one of the FTC's core missions. It allows consumers to make well-informed decisions about how to best use their resources and promotes the efficient functioning of market forces by encouraging the dissemination of accurate information.

For example, 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.⁴² We have challenged bogus claims that treatments could cure, treat, or mitigate various serious diseases and ailments, including those affecting children and older consumers.⁴³ We have brought law enforcement actions against advertisers and ad agencies who allegedly used native advertising—commercial advertising masquerading as editorial content—to deceptively sell health products such as mosquito repellants during the Zika virus outbreak and cognitive improvement supplements.⁴⁴ The Commission also has sued companies that claimed, allegedly without scientific evidence, that using their products could

⁴¹ See generally FTC, *FTC Consumer Sentinel Network* (Apr. 8, 2019), <https://public.tableau.com/profile/federal.trade.commission>.

⁴² 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>.

⁴³ See, e.g., *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-medical-group-inc>; *A&O Enters., Inc.*, No. C-4670 (Feb. 21, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3016/ao-enterprises-doing-business-iv-bars-aaron-k-roberts-matter>.

⁴⁴ See, e.g., *FTC v. Glob. Cmty. Innovations LLC*, No. 5:19-CV-00788 (N.D. Ohio Apr. 10, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/162-3135/global-community-innovations-llc-et-al-geniuix>; *Creaxion Corp.*, No. C-4668 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3066/creaxion-corp>; *Inside Publ'ns, LLC*, No. C-4669 (Feb. 8, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/172-3067/inside-publications-llc>.

alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.⁴⁵ The Commission obtained an order barring a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.⁴⁶ And we have issued joint warning letters with the Food and Drug Administration to marketers who claim their dietary supplements and cannabidiol ("CBD") products treat or prevent serious diseases, including Alzheimer's disease and cancer.⁴⁷

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.⁴⁸

D. Illegal Robocalls

Illegal robocalls also remain a significant consumer protection problem and one of consumers' top complaints to the FTC. These calls disturb consumers' privacy, and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In FY 2018, the FTC received more than 5.7 million complaints about unwanted calls, including 3.7 million

⁴⁵ *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 FTC Press Release, *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>.

⁴⁶ *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>.

⁴⁷ See FTC Press Release, *FTC Joins FDA in Sending Warning Letters to Companies Advertising and Selling Products Containing Cannabidiol (CBD) Claiming to Treat Alzheimer's, Cancer, and Other Diseases* (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-joins-fda-sending-warning-letters-companies-advertising>; FTC Press Release, *FTC and FDA Send Warning Letters to Companies Selling Dietary Supplements Claiming to Treat Alzheimer's Disease and Remediate or Cure Other Serious Illnesses Such as Parkinson's, Heart Disease, and Cancer* (Feb. 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-fda-send-warning-letters-companies-selling-dietary>.

⁴⁸ FTC Consumer Blog, *Treatments and Cures*, <https://www.consumer.ftc.gov/topics/treatments-cures>.

complaints about robocalls.⁴⁹ The FTC has used all the tools at its disposal to fight these illegal calls, including 141 enforcement actions to date.⁵⁰

The FTC's most recent law enforcement crackdown stopped four separate robocall operations.⁵¹ For example, in *FTC v. Christiano*, the FTC obtained a \$1.35 million civil penalty and a ban on providing an autodialer to anyone engaged in telemarketing against two technology companies and their owner for knowingly providing the tools that unlawful telemarketers used to blast out billions of illegal robocalls.⁵² In another case from the recent crackdown,⁵³ the FTC sued a recidivist robocaller and his partners for allegedly running a Google rankings scam that used robocalls to reach their victims and bombarded individuals who did not own businesses with the same robocalls.⁵⁴ In April, a court granted the FTC's motion for summary judgment, banning him and one of his co-defendants from all telemarketing and imposing a \$3.3 million judgment.

Despite the FTC's vigorous law enforcement program, technological advances continue to permit bad actors to place millions or even billions of calls, often from abroad, at very low cost, and

⁴⁹ See *Do Not Call Registry Data Book 2018: Complaint Figures for FY 2018*, <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2018>.

⁵⁰ 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 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 2017, 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>.

⁵¹ See FTC Press Release, *FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls* (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-crackdown-stops-operations-responsible-billions-illegal>.

⁵² *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>.

⁵³ *FTC v. Pointbreak Media LLC et al.*, No. 18-cv-61017 (S.D. Fla. May 23, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/172-3182/pointbreak-media-llc-0>.

⁵⁴ Previously, in 2017, the FTC settled claims with Ramsey for illegal robocalls and calls to numbers listed on the National Do Not Call Registry. See *FTC v. Ramsey et al.*, No. 9:17-cv-80032 (S.D. Fla. Jan. 13, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/132-3254/justin-ramsey>.

in ways that are difficult to trace. This phenomenon continues to infuriate consumers and challenge enforcers. 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.⁵⁵ 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.⁵⁶ The telecommunications industry has also developed a new framework, SHAKEN/STIR, which is designed to limit illegitimate number spoofing and reduce illegal robocalls.

The FTC continues to engage with industry stakeholders and supports the industry initiative to authenticate caller ID numbers. The FTC also regularly works with its state, federal, and international partners to combat illegal robocalls.⁵⁷

⁵⁵ 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 FTC Press Release, *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 FTC Press Release, *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>; FTC Press Release, *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>.

⁵⁶ See <https://www.consumer.ftc.gov/features/how-stop-unwanted-calls>.

⁵⁷ See, e.g., FTC Press Release, *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; FTC Press Release, *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; Memorandum of Understanding Among Public Authorities of the Unsolicited Communications Enforcement Network Pertaining to Unlawful Telecommunications and SPAM (May 2016), <https://www.ftc.gov/policy/cooperation-agreements/international-unlawful-telecommunications-spam-enforcement-cooperation>; FTC Press Release, *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>.

For many years, the Commission has recommended 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 might argue that it is 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.⁵⁸

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, infographics, videos, social media, and education campaigns. For example, in response to the enactment of the Economic Growth, Regulatory Relief, and Consumer Protection Act,⁵⁹ which allows consumers nationwide to freeze their credit and place year-long fraud alerts for free, the Commission helped consumers take advantage of the new protections by: updating IdentityTheft.gov; revising its identity theft

⁵⁸ 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>.

⁵⁹ Pub. L. No: 115-174.

publications; and providing blogs, webinars, and podcasts in collaboration with a wide range of partners.⁶⁰

The FTC also tailors its guidance to serve specific audiences, including older adults.⁶¹ A recent FTC report to Congress details how older adults experience scams,⁶² and a series of FTC Data Spotlights gives further details on scams that affect older adults⁶³ and helps educate consumers.⁶⁴

The Commission also works to provide companies with resources on a variety of issues that affect businesses. For example, our “Cybersecurity for Small Business” campaign, a joint effort with the National Institute of Standards and Technology, the Small Business Administration, and the Department of Homeland Security, includes a dozen need-to-know topics as well as fact sheets, videos, and other materials.⁶⁵

IV. COMPETITION MISSION

The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their wallets, such as health care, consumer products and services, technology, manufacturing, and energy. The Commission shares federal antitrust enforcement responsibilities with the DOJ Antitrust Division.

⁶⁰ See, e.g., FTC Press Release, *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>.

⁶¹ See www.ftc.gov/PassItOn and www.ftc.gov/Pasalo. The campaign has distributed more than 10.6 million print publications since its creation, including 1.1 million so far in fiscal year 2019.

⁶² FTC Report, *Protecting Older Consumers: 2017-2018* (Oct. 2018), <https://www.ftc.gov/reports/protecting-older-consumers-2017-2018-report-congress-federal-trade-commission>.

⁶³ See, e.g., FTC Consumer Protection Data Spotlight, *Older Adults Hardest Hit by Tech Support Scams* (Mar. 7, 2019), <https://www.ftc.gov/news-events/blogs/data-spotlight/2019/03/older-adults-hardest-hit-tech-support-scams>.

⁶⁴ See, e.g., FTC Consumer Blog, *How to Spot, Avoid, and Report Tech Support Scams* (Feb. 2019), <https://www.consumer.ftc.gov/articles/how-spot-avoid-and-report-tech-support-scams> and <https://www.consumidor.ftc.gov/articulos/como-detectar-evitar-y-reportar-las-estafas-de-soporte-tecnico>.

⁶⁵ 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>. These materials will soon be available in Spanish.

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 with the FTC and DOJ and observe the statutorily prescribed waiting period before consummating their transactions. Premerger filings under the HSR Act have generally increased steadily since FY 2013. Last year, for the second year in a row, we received just over 2,000 HSR filings.⁶⁶

Most reported transactions do not raise significant competitive concerns, and the agencies clear those non-problematic transactions expeditiously. But when the evidence suggests that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. In FY 2018, the Commission took enforcement actions against 22 different mergers, most of which were resolved through a consent decree. We also challenged five mergers in court: federal courts granted preliminary injunctions in two cases;⁶⁷ the parties abandoned their plans in the face of our court challenge in two cases;⁶⁸ and a ruling is currently pending in the fifth matter.⁶⁹

Over the past year, the Commission has continued its decades-long efforts to fight anti-competitive conduct in the pharmaceuticals and health care industries, where rising costs continue to burden American consumers. For over twenty years, the Commission has prioritized ending anticompetitive reverse payment patent agreements 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

⁶⁶ The agencies received 2,111 HSR filings in FY 2018, a slight increase from FY 2017, where we received 2,052. Apart from the last two years, the last time annual HSR notification filings exceeded 2,000 was back 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>.

⁶⁷ See, *FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187 (D.D.C 2018), (granting preliminary injunction); *FTC v. Wilh. Wilhelmsen Holding ASA*, 341 F. Supp. 3d 27 (D.D.C. 2018) (granting preliminary injunction). The agency also won a full administrative trial on the merits in the *Tronox* matter before an administrative law judge, before the parties ultimately settled with the agency. FTC Press Release, *FTC Requires Divestitures by Tronox and Cristal, Suppliers of Widely Used White Pigment, Settling Litigation over Proposed Merger* (Apr. 10, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-requires-divestitures-tronox-cristal-suppliers-widely-used>.

⁶⁸ J.M. Smuckers and Conagra abandoned their planned combination after the FTC filed suit in March 2018. CDK abandoned its plan to purchase Auto-Mate after the Commission initiated litigation in March 2018.

⁶⁹ The agency formally challenged the consummated merger of Otto Bock and Freedom Innovations in FY 2018. Litigation before an administrative law judge concluded last fall, and the agency is currently awaiting a ruling.

U.S. Supreme Court’s 2013 decision in *FTC v. Actavis, Inc.*,⁷⁰ 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,⁷¹ and other manufacturers, including the remaining *Actavis* defendants,⁷² have agreed to abandon the practice.⁷³ In administrative litigation, the Commission ruled in March of this year that Impax had engaged in an illegal reverse payment agreement designed to block consumers’ access to a lower-cost generic version of the branded drug, Opana ER.⁷⁴ In addition, the Commission has challenged other anticompetitive conduct by drug manufacturers. Last month, the Commission filed a complaint against the health information company Surescripts, alleging that it employed illegal vertical and horizontal restraints to maintain its monopolies over two electronic prescribing, or “e-prescribing,” markets (routing and eligibility).⁷⁵ Additionally, 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.⁷⁶

⁷⁰ 570 U.S. 756 (2013).

⁷¹ FTC Press Release, *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>.

⁷² On February 28, 2019, after over ten years of litigation, the Commission reached a settlement with the final remaining defendant in the *Actavis* case. FTC Press Release, *Last Remaining Defendant Settles FTC Suit that Led to Landmark Supreme Court Ruling on Drug Company “Reverse Payments”* (Feb. 28, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/last-remaining-defendant-settles-ftc-suit-led-landmark-supreme>.

⁷³ FTC Press Release, *FTC Enters Global Settlement to Resolve Reverse-Payment Charges against Teva* (Feb. 19, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftc-enters-global-settlement-resolve-reverse-payment-charges>; 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>.

⁷⁴ FTC Press Release, *FTC Concludes that Impax Entered into Illegal Pay-for-Delay Agreement* (Mar. 29, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-concludes-impax-entered-illegal-pay-delay-agreement>.

⁷⁵ FTC Press Release, *FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets* (Apr. 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-surescripts-illegal-monopolization-e-prescription>.

⁷⁶ *FTC v. AbbVie Inc.*, 329 F. Supp. 3d 98 (E.D. Pa. 2018); 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>

The Commission also maintains a robust program to identify and stop anticompetitive conduct. This year, in administrative litigation of the *I-800 Contacts* matter, the Commission ruled that agreements among competitors to limit the scope of their internet advertising were unlawful.⁷⁷ The agency also successfully argued and won an important procedural victory in the U.S. Court of Appeals for the Fifth Circuit, defeating an effort by the Louisiana Real Estate Appraisers Board to obtain interlocutory review of the agency's determination that the state-action doctrine did not apply to its conduct.⁷⁸ The agency also has several other conduct matters in active litigation.⁷⁹

The Commission also continues to focus its attention on high technology markets. In an effort to more closely monitor developments in the technology sector, the FTC's Bureau of Competition recently announced the creation of a Technology Task Force dedicated to monitoring competition in U.S. technology markets.⁸⁰ The Task Force will include attorneys from the Bureau of Competition with expertise in complex product and service markets and ecosystems, including markets for online advertising, social networking, mobile operating systems and apps, and platforms, and will be supported by a Technology Fellow who will provide important technical assistance for investigations. The Task Force will examine industry practices, conduct law enforcement investigations, and coordinate and consult with staff throughout the FTC on technology-related matters, including prospective merger reviews and reviews of consummated technology mergers.

[chairman-joe-simons-regarding-federal-court-ruling](#).

⁷⁷ *In re I-800 Contacts, Inc.*, Dkt. No. 9372 (Nov. 14, 2018),

https://www.ftc.gov/system/files/documents/cases/docket_no_9372_opinion_of_the_commission_redacted_public_version.pdf. This matter is currently on appeal to the U.S. Court of Appeals for the Second Circuit.

⁷⁸ *La. Real Estate Appraisers Bd. v. FTC*, 917 F.3d 389 (5th Cir. 2019).

⁷⁹ 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 Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

⁸⁰ FTC Press Release, *FTC's Bureau of Competition Launches Task Force to Monitor Technology Markets* (Feb. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftcs-bureau-competition-launches-task-force-monitor-technology>.

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,⁸¹ and in *amicus* briefs filed in federal courts considering important areas of antitrust law.⁸² The Commission benefits from critical self-examination, examining prior merger enforcement decisions to assess their impact on competition and consumers, and we intend to expand 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.⁸³

V. INTERNATIONAL COOPERATION

The FTC also engages in significant international work to support its domestic enforcement programs. 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 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. The FTC also works directly with foreign counterparts on enforcement issues.⁸⁴

International enforcement cooperation also is critical for the FTC's competition program.

⁸¹ See generally <https://www.ftc.gov/policy/advocacy>.

⁸² Amicus briefs are posted at <https://www.ftc.gov/policy/advocacy/amicus-briefs>.

⁸³ 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.

⁸⁴ For example, the FTC has conducted several trainings and roundtables in the United States and India to help develop the capacity of Indian law enforcement to address tech support and other impostor scams such as the impersonation of IRS and Social Security officials. To address these continued threats, the FTC will convene a fourth annual roundtable in June, in partnership with the U.S.-India Business Council, on combatting Indian call center fraud. U.S.-India Business Council, *4th Annual Round Table on Stepping Up to Stop Indian Call Center Fraud*, <https://www.usibc.com/event/4th-annual-round-table-on-stepping-up-to-stop-indian-call-center-fraud>.

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 competition policies and procedures.⁸⁵ 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. 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.⁸⁶

The U.S. SAFE WEB Act is key to much of the agency's international work, especially on consumer protection and privacy matters.⁸⁷ Passed in 2006 and renewed in 2012, the Act strengthens the FTC's ability to work on cases with an international dimension. It allows 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 cases, the foreign agencies investigated conduct that directly harmed U.S. consumers; in others, the FTC's action led to reciprocal assistance. The Act also has bolstered the agency's authority to engage in enhanced enforcement cooperation with foreign counterparts, including through memoranda of understanding, international agreements, staff exchanges, and other mechanisms.

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ 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.). Certain provisions, such as the secondment program for foreign officials described below, also apply to the FTC's competition work.

The U.S. SAFE WEB Act has been a remarkable success. The Act enabled the FTC to respond to more than 130 SAFE WEB information sharing requests from more than 30 foreign enforcement agencies. It allowed the FTC to issue 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.⁸⁸

The FTC's foreign law enforcement partners similarly have assisted FTC enforcement actions. For example, the FTC worked directly with U.K. and Canadian authorities to halt Next-Gen Inc., a sweepstakes scam.⁸⁹ The FTC relied on key information sharing provisions of the U.S. SAFE WEB Act to facilitate cooperation with its U.K. partner and, last month, the defendants forfeited \$30 million in cash and assets to settle the FTC's charges. 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 its COPPA case against V-Tech, the FTC's first case involving Internet-connected toys.⁹⁰ The FTC also brought several significant enforcement actions in the past year relying on the SAFE WEB Act's provisions that allow the FTC to reach foreign conduct that has a "reasonably foreseeable" effect on U.S. consumers, or that involves "material conduct" in the United States, as the basis for challenging practices involving foreign defendants.⁹¹

⁸⁸ See Remarks by John Pecman, Commissioner of Competition [Canada] at International Privacy Enforcement Meeting (June 4, 2015), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03957.html>.

⁸⁹ FTC Press Release, *Operators of Sweepstakes Scam Will Forfeit \$30 Million to Settle FTC Charges* (Mar. 7, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/operators-sweepstakes-scam-will-forfeit-30-million-settle-ftc>.

⁹⁰ *U.S. v. VTech Electronics 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>.

⁹¹ See, e.g., FTC Press Release, *Court Temporarily Halts International Operation that Allegedly Deceived Consumers through False Claims of "Free Trial" Offers and Imposed Unauthorized Continuity Plans* (Nov. 28, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/court-temporarily-halts-international-operation-allegedly>; FTC Press Release, *At FTC's Request, Court Halts Massive "Sanctuary Belize" Real Estate Investment Scam* (Nov. 8, 2018), <https://www.ftc.gov/news-events/press-releases/2018/11/ftcs-request-court-halts-massive-sanctuary-belize-real-estate>; FTC Press Release, *FTC Halts Online Marketers Responsible for Deceptive "Free Trial" Offers* (July 3, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-halts-online-marketers-responsible-deceptive-free-trial>; FTC Press Release, *FTC Action Halts MOBE, a Massive Internet Business Coaching Scheme* (June 11, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-action-halts-mobe-massive-internet-business-coaching->

The Act also underpins the FTC's ability to participate in cross-border cooperation arrangements. This includes data transfer mechanisms such as the EU-U.S. Privacy Shield framework and the Swiss-U.S. Privacy Shield framework, as well as the APEC Cross-Border Privacy Rules System, designed to protect privacy and data flows in the Asia-Pacific region. Many U.S. companies use these mechanisms to carry out cross-border data flows consistent with strong privacy protections. The SAFE WEB Act also provides the FTC with key powers helping to carry out enhanced cooperation with important partners.⁹²

The SAFE WEB Act's provision authorizing staff exchanges also yields tremendous benefits. Using the Act, the FTC established an International Fellows program that has enabled the agency to host over 120 officials of foreign competition, consumer protection, and data privacy agencies to work alongside FTC staff on enforcement matters, subject to confidentiality protections, over the past dozen years. Foreign counterparts continue to seek exchanges with us, as the Fellows incorporate their learning from the FTC into the work of their home agencies, strengthening their capacity as well as our cooperative relationships with those counterparts.

The Act sunsets in 2020. The Commission strongly urges Congress to reauthorize this critical authority and eliminate the sunset provision. Just as Congress permanently granted the Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission similar enforcement powers decades ago, and provided the Consumer Product Safety Commission with permanent authority to share information with its foreign counterparts, we ask Congress to repeal the Act's sunset provision and make the SAFE WEB Act's cooperation tools a permanent part of the FTC Act.

[scheme.](#)

⁹² FTC Press Release, *FTC Signs Memorandum of Understanding with United Kingdom's Competition and Markets Authority to Strengthen Consumer Protection Enforcement Cooperation* (Mar. 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-signs-memorandum-understanding-united-kingdoms-competition>. The MOU streamlines sharing investigative information and complaint data, simplifies requests for investigative assistance, aids joint law enforcement investigations, and provides strong confidentiality and data safeguards.

VI. 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.