

PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION

Before the

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEE ON FINANCIAL SERVICES AND

GENERAL GOVERNMENT

UNITED STATES SENATE

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I. INTRODUCTION

Chairman Lankford, 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 FY2019 appropriations request and its work to protect consumers and promote competition.¹

The FTC is a highly productive and effective independent agency comprised of three bureaus: the Bureau of Consumer Protection (“BCP”), the Bureau of Competition (“BC”), and the Bureau of Economics, which supports both BCP and BC. It 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 companies, to high-technology and emerging industries. This is an historic time at the Commission; four new Commissioners joined the agency in the past two weeks, including myself. We look forward to continuing to work cooperatively in a bipartisan manner.

The FTC is primarily a civil law enforcement agency that investigates and prosecutes those engaging in unfair or deceptive acts or practices or unfair methods of competition, and seeks to do so without impeding legitimate business activity.² 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

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 of any other Commissioner.

² The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, 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. *See* <http://www.ftc.gov/ogc/stats.shtm>.

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.

The Commission pursues a vigorous and effective law enforcement program, and the impact of its work is significant. The Commission has an experienced and talented staff executing this work, but it needs the resources to support their efforts. This testimony provides a description of the agency's current budget, its budget request for FY 2019, and the basis for the increase in its request. This testimony also 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 identifies certain challenges that affect the Commission's ability to protect U.S. consumers and competition to the full extent of our authority.

II. BUDGET AND RESOURCES

In FY 2018, the FTC's enacted budget is \$306.3 million and 1,140 FTEs. For FY 2019, the FTC is requesting \$309.7 million and 1,140 FTEs. The additional \$3.4 million requested is for expert witnesses, a growing need in light of increased numbers 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 often needed to support our cases. For example, in competition cases we require experts to opine on such issues as the proper definition of product and geographic markets, the likelihood of entry by new competitors, and appropriate models to weigh merger efficiencies against potential competitive harm. 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 proving 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.

The FTC's budget request assumes that total offsetting collections from Hart-Scott-Rodino Act (HSR) filing fees and Do Not Call fees will provide the FTC with \$140.4 million in FY 2019, so that an estimated \$169.3 million in direct appropriations would be needed to provide the FTC with the requested amount of \$309.7 million in FY 2019.

The FTC seeks to maximize its budget and uses its no-year money flexibility to manage it, but substantially increased expert costs are limiting the agency's ability to meet critical IT modernization and other investments necessary to continue to optimize operations.

The agency continues to utilize its resources effectively on behalf of American consumers. When possible, the agency collects money to return to harmed consumers. During FY 2017 alone, the agency returned over \$543 million in redress to consumers and deposited \$94 million into the U.S. Treasury, reflecting collections in both consumer protection and competition matters. In addition, in FY 2017, FTC orders in the *Volkswagen*,³ *Amazon*,⁴ and *Net Spend*⁵ matters required defendants to self-administer consumer refund programs worth more than \$11.5 billion.

Each year, the agency estimates how much money it has saved consumers through law enforcement, in comparison to the FTC's costs. The FTC estimates that in FY 2017 the agency saved consumers over \$3.7 billion through its competition enforcement efforts and over \$1.29 billion through its consumer protection enforcement actions.⁶ During FY 2017, the agency saved consumers over 12 times the amount of resources devoted to the consumer protection program;

³ *FTC v. Volkswagen Group of America, Inc.*, No. 3:15-md-02672-CRB (N.D. Cal. May 17, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3006/volkswagen-group-america-inc>.

⁴ *FTC v. Amazon.com, Inc.*, No. 2:14-cv-01038 (W.D. Wash. Apr. 4, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/122-3238/amazoncom-inc>.

⁵ *FTC v. NetSpend Corporation*, No. 1:16-cv-04203-AT (N.D. Ga. Apr. 10, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/netspend-corporation>.

⁶ FTC Report, *Agency Financial Report for FY 2017*, at 45 (Nov. 16, 2017) available at <https://www.ftc.gov/reports/agency-financial-report-fy2017>.

over 55 times the amount of resources devoted to the merger program; and more than 39 times the amount 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, deceptive, and 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, respectively. The FTC targets its enforcement and education efforts to achieve maximum impact, which includes working closely with federal, state, international, and private sector partners on joint initiatives. The agency also convenes workshops with various stakeholders to examine emerging consumer protection issues and releases reports on a variety of consumer protection topics. The Commission's structure, research capacity, and committed staff enable the FTC to continue to meet its mandate of protecting consumers and competition in an ever-changing marketplace. Among other issues, the FTC addresses fraud across most sectors of the economy, protects privacy and data security, and helps ensure that advertising claims to consumers are truthful and not misleading. Below we list some recent significant examples of the agency's work.

A. Protecting Consumers from Fraud

A major focus of the FTC's law enforcement is fighting fraud. 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. Below are a few examples of the variety of frauds that the Commission has recently pursued, and ways that the Commission leverages its limited resources to do so effectively.

1. Imposter Scams

Reports about imposter scams have been on the rise over the past few years, and many of these scams target seniors.⁷ 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.

For example, during the past year, 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 trick consumers into believing their computers are infected with viruses and malware, and then charge them hundreds of dollars for unnecessary repairs.⁸ The FTC brought actions to shut down these deceptive operations and also developed consumer education materials to help consumers avoid falling victim to tech support scams in the first place.⁹

2. Emerging Frauds

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 deceptive money-making frauds involving cryptocurrencies – digital assets that use cryptography to secure or verify transactions. The Commission has worked to educate consumers about cryptocurrencies and hold fraudsters accountable. In March, the FTC halted the operations of Bitcoin Funding Team, which allegedly

⁷ FTC Fiscal Year 2019 Congressional Budget Justification, available at <https://www.ftc.gov/reports/fy-2019-congressional-budget-justification>.

⁸ Press Release, *FTC and Federal, State and International Partners Announce Major Crackdown on Tech Support Scams* (May 12, 2017), available at <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), available at <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

⁹ FTC Guidance, *Tech Support Scams* (July 2017), available at <https://www.consumer.ftc.gov/articles/0346-tech-support-scams#How>.

falsely promised that participants could earn large returns by enrolling in money-making schemes and paying with cryptocurrency.¹⁰ On June 25, the FTC will host a workshop to explore how scammers are exploiting public interest in cryptocurrencies like bitcoin and Litecoin, and to discuss ways to empower and protect consumers against this growing threat of exploitation.¹¹

3. Illegal Robocalls

Illegal robocalls remain a significant consumer protection problem because they repeatedly disturb consumers' privacy and frequently use fraud and deception to pitch goods and services, leading to significant economic harm. In FY 2017, the FTC received more than 4.5 million robocall complaints.¹² The FTC is using every tool at its disposal to fight these illegal calls.¹³ Technological advances, however, have allowed bad actors to place millions or even billions of calls, often from abroad, at very low costs, and in ways that are difficult to trace. This continues to infuriate consumers and challenge enforcers.

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 135 enforcement actions seeking civil penalties,¹⁴ restitution for victims of telemarketing scams, and disgorgement of ill-gotten gains against 439 corporations and 356 individuals. As a

¹⁰ *FTC v. Thomas Dluca, et al. (Bitcoin Funding Team)* No. 0:18-cv-60379-KMM (S.D.N.Y. Mar. 16, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding>.

¹¹ FTC Workshop, *Cryptocurrency Workshop* (Apr. 30, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/06/decrypting-cryptocurrency-scams>.

¹² 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 7million. See *Do Not Call Registry Data Book 2017: Complaint Figures for FY 2017*, available at <https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2017>.

¹³ See FTC Robocall Initiatives, available at <https://www.consumer.ftc.gov/features/feature-0025-robocalls>.

¹⁴ As is true of all TSR violations, telemarketers who violate the Do Not Call provisions are subject to civil penalties of more than \$40,000 per violation. 15 U.S.C. § 45(m)(1)(A); 16 C.F.R. § 1.98(d).

result of the 125 cases resolved thus far, the Commission has collected over \$121 million in equitable monetary relief and civil penalties.¹⁵ Recently, 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.¹⁶

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.¹⁷ 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 when they place calls.

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, the FTC led four public challenges to incentivize innovators to help tackle the unlawful robocalls that plague consumers.¹⁸ The FTC’s challenges contributed to a shift in the development

¹⁵ See Enforcement of the Do Not Call Registry available at <https://www.ftc.gov/news-events/media-resources/do-not-call-registry/enforcement>.

¹⁶ *U.S. et al. v. Dish Network, L.L.C.*, No. 309-cv-03073-JES-CHE (C.D. Ill. Aug. 10, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/052-3167/dish-network-llc-united-states-america-federal-trade>. The *Dish* litigation began in 2009 when the Department of Justice brought an action on behalf of the FTC with the states of California, Illinois, North Carolina, and Ohio alleging millions of violations of the Telemarketing Sales Rule, the Telephone Consumer Protection Act (“TCPA”), and various state Do Not Call laws by making tens of millions of calls—often robocalls—to telephone numbers on the Do Not Call Registry.

¹⁷ FTC Workshop, *Robocalls: All the Rage* (Oct. 18, 2012), available at <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.

¹⁸ The first challenge, in 2013, called upon the public to develop a consumer-facing solution to blocks illegal robocalls. One of the winners, “NomoRobo,” was on the market within 6 months after being named one of the winners. To date, “NomoRobo,” which reports blocking over 600 million calls, is being offered directly to consumers by a number of

and availability of technological solutions in this area, particularly call-blocking and call-filtering products.

In addition, the FTC regularly works with its state, federal, and international partners to combat illegal robocalls. For example, this spring the FTC and Federal Communications Commission co-hosted a Joint Policy Forum on Illegal Robocalls to discuss the regulatory and enforcement challenges posed by illegal robocalls, as well as a public technology expo featuring new technologies, devices, and applications to minimize or eliminate the number of illegal robocalls consumers receive.¹⁹

B. Protecting Consumer Privacy and Data Security

The FTC has unparalleled experience in consumer privacy enforcement. The Commission has used its core enforcement authority – Section 5 of the FTC Act – to take action against companies engaged in unfair or deceptive practices involving the privacy and security of consumers’ information.²⁰ The FTC also enforces sector-specific statutes that protect certain health,²¹ credit,²² financial,²³ and children’s information.²⁴

telecommunications providers and is available as an app on iPhones. *See* Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; *see also* Press Release, *FTC Awards \$25,000 Top Cash Prize for Contest-Winning Mobile App That Blocks Illegal Robocalls* (Aug. 17, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/08/ftc-awards-25000-top-cash-prize-contest-winning-mobile-app-blocks>; Press Release, *FTC Announces Winners of “Zapping Rachel” Robocall Contest* (Aug. 28, 2014), available at <https://www.ftc.gov/news-events/press-releases/2014/08/ftc-announces-winners-zapping-rachel-robocall-contest>; Press Release, *FTC Announces Robocall Challenge Winners* (Apr. 2, 2013), available at <https://www.ftc.gov/news-events/press-releases/2013/04/ftc-announces-robocall-challenge-winners>.

¹⁹ *See* Press Release, *FTC and FCC to Host Joint Policy Forum on Illegal Robocalls* (Mar. 22, 2018), available at www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-host-joint-policy-forum-illegal-robocalls; Press Release, *FTC and FCC Seek Exhibitors for an Expo Featuring Technologies to Block Illegal Robocalls* (Mar. 7, 2018) available at www.ftc.gov/news-events/press-releases/2018/03/ftc-fcc-see-exhibitors-expo-featuring-technologies-block-illegal.

²⁰ 15 U.S.C. § 45(a).

²¹ 16 C.F.R. Part 318.

²² 15 U.S.C. §§ 1681-1681x.

²³ 16 C.F.R. Part 314, implementing 15 U.S.C. § 6801(b).

²⁴ 15 U.S.C. §§ 6501-6506; *see also* 16 C.F.R. Part 312.

Some of the FTC’s privacy enforcement priorities include financial privacy, children’s privacy, health privacy, the Internet of Things, and data security. Ongoing work includes investigations of Facebook’s privacy practices²⁵ and the Equifax data breach. These kinds of large and complex investigations underscore the need for resources. In January, the Commission issued its annual report summarizing its privacy and data security work in 2017.²⁶ Below are a few highlights of the Commission’s recent work.

Financial privacy has long been an area of particular emphasis for the FTC. For example, the FTC alleged that online tax preparation service TaxSlayer violated the Gramm-Leach-Bliley Act’s Safeguards Rule by, among other things, failing to implement adequate risk-based authentication measures and failing to require consumers to choose strong passwords.²⁷ The FTC alleged that malicious hackers were able to gain full access to nearly 9,000 TaxSlayer accounts between October 2015 and December 2015 and use that information to engage in tax identity theft, which allowed them to obtain tax refunds by filing fraudulent tax returns.

The Commission also takes seriously its commitment to protect children’s privacy, which continues to be a focus of the FTC’s enforcement efforts. In the Commission’s first children’s privacy case involving Internet-connected toys, the FTC announced a settlement with electronic toy manufacturer VTech Electronics for violations of the Children’s Online Privacy Protection Rule, including a civil penalty of \$650,000.²⁸ The FTC alleged that the company collected children’s

²⁵ Statement by the Acting Director of FTC’s Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), available at <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

²⁶ FTC Report, *Privacy & Data Security Update: 2017* (Jan. 2018), available at <https://www.ftc.gov/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives> (hereinafter “2017 Privacy & Security Update”).

²⁷ *TaxSlayer, LLC*, No. C-4626 (Nov. 8, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3063/taxslayer>.

²⁸ *U.S. v. VTech Electronics Ltd. et al.*, No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3032/vtech-electronics-limited>. See also *U.S. v. Prime Sites*,

personal information online without first obtaining parental consent, and failed to take reasonable steps to secure the data it collected.²⁹

The FTC has also continued to focus on privacy and data security involving the Internet of Things. For example, last year Vizio, one of the world's largest manufacturers and sellers of Internet-connected smart televisions, agreed to pay \$2.2 million to settle charges that it installed software on its televisions to collect the viewing data of 11 million consumers without the consumers' knowledge or consent.³⁰ Additionally, the FTC co-hosted with the National Highway Traffic Safety Administration a workshop on privacy and security issues posed by automated and connected motor vehicles.³¹

Data security continues to be a crucial part of the FTC's privacy work. To date, the Commission has brought more than 60 cases alleging that companies failed to implement reasonable safeguards for the consumer data they maintain.³² For example, the Commission recently announced 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.³³ As a result, an intruder accessed personal information about

Inc. also d/b/a Explore Talent, No. 2:18-cv-00199 (D. Nev. Feb. 12, 2018), available at

<https://www.ftc.gov/enforcement/cases-proceedings/162-3218/prime-sites-inc-explore-talent>.

²⁹ In addition to law enforcement, the FTC also undertakes policy initiatives, such as its recent workshop co-hosted with the Department of Education on educational technology and student privacy. See *Student Privacy and Ed Tech* (Dec. 1, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/12/student-privacy-ed-tech>.

³⁰ *VIZIO, INC. and VIZIO Inscape Services, LLC*, No. 2:17-cv-00758 (D.N.J. Feb. 6, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/162-3024/vizio-inc-vizio-inscape-services-llc>.

³¹ FTC Workshop, *Connected Cars: Privacy, Security Issues Related to Connected, Automated Vehicles* (June 28, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/06/connected-cars-privacy-security-issues-related-connected>.

³² 2017 Privacy & Security Update, *supra* n.26.

³³ *Uber Technologies, Inc.*, Matter No. 1523054 (Apr. 11, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3054/uber-technologies-inc>. Following the announcement of last year's original proposed settlement, the Commission learned that Uber had failed to disclose a significant breach of consumer data that occurred in 2016 – in the midst of the FTC's investigation that led to the August 2017 settlement announcement. Due to Uber's misconduct related to the 2016 breach, Uber will be subject to additional requirements. Among other things, the revised settlement could subject Uber to civil penalties if it fails to notify the FTC of certain future incidents involving

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. The FTC also reached a settlement with one of the world's largest computer manufacturers, Lenovo, related to allegations that the company pre-loaded software onto some of its laptops that compromised security protections in order to deliver ads to consumers.³⁴

As the United States' leading privacy enforcement agency, 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. We have brought enforcement actions to enforce it and will continue to do so when participants fail to meet their legal obligations. The Commission will continue to work with other agencies in the U.S. government and with our partners in Europe to ensure businesses and consumers can continue to benefit from the Privacy Shield.

The Commission is aware that Congress has long considered whether to adopt comprehensive data security legislation. The agency stands ready, willing and able to work with Congress on that issue.

Finally, the Commission supports its vital enforcement work with privacy and security research. For example, in February, the FTC held its third annual PrivacyCon, a conference examining cutting-edge research and trends in protecting consumer privacy and security.³⁵ The FTC also held a conference to examine how identity theft has evolved over the last decade and what we

unauthorized access of consumer information.

³⁴ *Lenovo, Inc.*, No. C-4636 (Jan. 2, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/152-3134/lenovo-inc>.

³⁵ This year's event focused on the economics of privacy including how to quantify the harms that result from companies' failure to secure consumer information, and how to balance the costs and benefits of privacy-protective technologies and practices. FTC Workshop, *PrivacyCon 2018* (Feb. 28, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/02/privacycon-2018>.

can do to address the challenges it poses.³⁶ And in December, the Commission held a workshop to examine consumer injury in the context of privacy and data security.³⁷

C. 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 the best use of their resources and allows companies to compete on a level playing field. 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.³⁸ The Commission also has sued companies that allegedly claimed, without scientific evidence, that using their products could alleviate the symptoms of opioid withdrawal and increase the likelihood of overcoming opioid dependency.³⁹ Finally, the Commission recently barred a marketer from making deceptive claims about its products' ability to mitigate the side effects of cancer treatments.⁴⁰

³⁶ FTC Workshop, *Identity Theft: Planning for the Future* (May 24, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/05/planning-future-conference-about-identity-theft>.

³⁷ FTC Workshop, *Informational Injury* (Dec. 12, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/12/informational-injury-workshop>.

³⁸ See, e.g., *FTC and State of Maine v. Health Research Laboratories, Inc.*, No. 2:17-cv-00467 (D. Maine Nov. 30, 2017), available <https://www.ftc.gov/enforcement/cases-proceedings/152-3021/health-research-laboratories-llc>; *Telomerase Activation Sciences, Inc. and Noel Thomas Patton*, No. C-4644 (Apr. 19, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3103/telomerase-activation-sciences-inc-noel-thomas-patton-matter>.

³⁹ *FTC v. Catlin Enterprises, Inc.*, No. 1:17-cv-403 (W.D. Tex. May, 17, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/1623204/catlin-enterprises-inc>. In addition, in conjunction with the FDA, the FTC recently issued letters to companies that appeared to be making questionable claims to sell addiction or withdrawal remedies. *FTC and U.S. FDA Opioid Warning Letters* (Jan. 24, 2018), available at <https://www.ftc.gov/ftc-fda-opioid-warning-letters>.

⁴⁰ *FTC v. CellMark Biopharma and Derek E. Vest*, No. 2:18-cv-00014-JES-CM (M.D. Fla. Jan. 12, 2018), available at

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.⁴¹

D. Consumer 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 our website, the media, and partner organizations that disseminate consumer information on the agency’s behalf. The FTC delivers actionable, practical, plain language materials on dozens of issues, and updates its consumer education whenever it has new information to share. The FTC disseminates these tips through articles, blog posts, social media, infographics, videos, audio, and campaigns such as “Pass It On”—an innovative means of arming older consumers with information about scams that they can “pass on” to their friends and family.⁴²

IV. COMPETITION MISSION

The Commission seeks to promote competition through vigorous law enforcement, a robust policy and research agenda, and international cooperation and coordination.

A. Enforcement

The FTC enforces U.S. antitrust law in many sectors that directly affect consumers and their pocketbooks, such as health care, consumer products and services, technology, manufacturing, and

<https://www.ftc.gov/enforcement/cases-proceedings/162-3134/cellmark-biopharma-derek-e-vest>.

⁴¹ FTC Consumer Blog, *Treatments and Cures*, at <https://www.consumer.ftc.gov/topics/treatments-cures>.

⁴² See Pass It On, www.consumer.ftc.gov/features/feature-0030-pass-it-on#identity-theft.

energy. The Commission shares federal antitrust enforcement responsibilities with the Antitrust Division of the U.S. 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 large mergers and acquisitions must file premerger notification and wait for government review. Over the past five fiscal years, premerger filings under the Hart-Scott-Rodino Act have increased more than 50 percent; in the most recent fiscal year, the antitrust agencies received over 2000 HSR filings for the first time since 2007.⁴³ The vast majority of reported transactions do not raise competitive concerns, and the agencies clear those transactions expeditiously. However, when the evidence gives the Commission reason to believe that a proposed merger would likely be anticompetitive, the Commission has intervened. Since the beginning of fiscal year 2016, the Commission has challenged 45 mergers after the evidence showed that they would likely be anticompetitive.⁴⁴ Although many of these cases are resolved via divestiture settlements, in the last year alone, the Commission voted to initiate litigation to block seven mergers, each of which has required a significant commitment of resources to prosecute. Three of those challenges ended successfully when the parties abandoned the transaction after the Commission initiated litigation.⁴⁵ The four other merger cases are still being

⁴³ 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, available at <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

⁴⁴ During the same time period, the Antitrust Division challenged an additional 43 mergers.

⁴⁵ *FTC v. DraftKings, Inc.*, No. 17-cv-01195 (D.D.C. Jun. 19, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0174/draftkings-fanduel-ftc-state-california-district-columbia-y>; Press Release, *FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco owner, J.M. Smucker Co.*, (Mar. 5, 2018), available at <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), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

litigated.⁴⁶ In addition, Walgreens substantially restructured its proposed acquisition of Rite Aid after the Commission raised concerns about the original transaction during an extensive review.⁴⁷

The Commission also maintains a robust program to identify and stop anticompetitive conduct, and it currently has a number of cases in active litigation.⁴⁸ 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.*,⁴⁹ 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,⁵⁰ and other manufacturers have agreed to abandon the practice.⁵¹ In addition, the Commission has challenged other anticompetitive conduct by drug manufacturers,

⁴⁶ *FTC v. Sanford Health, et al.*, No. 1:17-cv-00133 (W.D.N.D. Jun. 23, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v>; *In re Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>; *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>; *FTC v. Wilhelmsen et al.*, No. 1:18-cv-00414 (D.D.C. Feb. 23, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v>.

⁴⁷ See Statement of Acting Chairman Maureen K. Ohlhausen in Walgreens Boots Alliance/Rite Aid, (Sept. 19, 2017), available at <https://www.ftc.gov/public-statements/2017/09/statement-acting-chairman-maureen-k-ohlhausen-walgreens-boots-alliancerite>.

⁴⁸ 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), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0199/qualcomm-inc>; *In re 1-800 Contacts, Inc.*, Dkt. 9372 (Aug. 8, 2016), available at <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), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0068/louisiana-real-estate-appraisers-board>; and *In re Benco Dental Supply et al.*, Dkt. 9379 (Feb. 12, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>.

⁴⁹ *FTC v. Actavis, Inc.*, 570 U.S. 756 (2013).

⁵⁰ 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), available at <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

⁵¹ Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>, and Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), available at <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.⁵² 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.⁵³

The Commission also follows closely activity in the high-technology sector. From smart appliances and smart cars to mobile devices and search platforms, the widespread use of technology and data is not only changing the way we live, but also the way firms operate. While many of these changes offer consumer benefits, they also raise complex and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission – in furthering its mission of protecting consumers and fostering competition – understand their developing technologies and scrutinize their conduct to ensure that they abide by the same rules of competitive markets that apply to any company.

B. Policy and Research

To complement our enforcement efforts, the FTC pursues a robust competition policy and research agenda to improve agency decision-making, and engages in competition advocacy and education initiatives. The FTC promotes competition principles in advocacy comments to state lawmakers and regulators as well as our sister federal agencies. The FTC also organizes public workshops and issues reports on important topics, such as a recent workshop on prescription drug

⁵² *FTC v. Abbvie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), available at <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), available at <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

⁵³ 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).

distribution practices,⁵⁴ several workshops concerning occupational licensing reform,⁵⁵ and an upcoming event on competition among residential real estate brokers.⁵⁶ 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.⁵⁷ Examining prior enforcement efforts to assess their impact on competition and consumers is critical to formulating an effective and efficient antitrust enforcement program, and the Commission will continue these self-assessment efforts in order to deploy our resources where they can do the most good.

C. International Engagement and Collaboration

With the expansion of global trade and the operation of many companies across national borders, the FTC and the Antitrust Division of the U.S. Department of Justice increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.⁵⁸ The FTC effectively coordinates reviews of multijurisdictional mergers and continues to work with its international counterparts to achieve consistent outcomes in cases of possible unilateral 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 an active role in multilateral

⁵⁴ FTC Workshop, *Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics* (Nov. 8, 2017), available at <https://www.ftc.gov/news-events/events-calendar/2017/11/understanding-competition-prescription-drug-markets-entry-supply>.

⁵⁵ See, e.g., Press Release, *FTC Announces Second Economic Liberty Public Roundtable* (Sept. 11, 2017), available at <https://www.ftc.gov/news-events/press-releases/2017/09/ftc-announces-second-economic-liberty-public-roundtable>.

⁵⁶ FTC Workshop, *What's New in Residential Real Estate Brokerage Competition* (Jun. 5, 2018), available at <https://www.ftc.gov/news-events/events-calendar/2018/04/whats-new-residential-real-estate-brokerage-competition-ftc-doj>.

⁵⁷ FTC Staff Report, *The FTC's Merger Remedies 2006-2012: A Report of the Bureaus of Competition and Economics* (2017), available at https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/p143100_ftc_merger_remedies_2006-2012.pdf.

⁵⁸ 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.

competition organization projects and initiatives. When appropriate, we also work with other agencies within the U.S. government to advance consistent competition enforcement policies, practices, and procedures in other parts of the world.⁵⁹

V. CONCLUSION

The FTC remains committed to maximizing its resources to enhance its effectiveness in protecting consumers and promoting 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.

⁵⁹ For example, we work through the United States 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.