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6 OVERSIGHT OF THE FEDERAL TRADE COMMISSION

7 WEDNESDAY, JULY 18, 2018

8 House of Representatives

9 Subcommittee on Digital Commerce and Consumer

10 Protection

11 Committee on Energy and Commerce

12 Washington, D.C.

13

14

15

16 The subcommittee met, pursuant to call, at 9:15 a.m., in

17 Room 2123 Rayburn House Office Building, Hon. Robert Latta

18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Latta, Kinzinger, Burgess,

20 Lance, Guthrie, McKinley, Bilirakis, Bucshon, Walters, Costello,

21 Walden (ex officio), Schakowsky, Lujan, Clarke, Dingell, Matsui,

22 Welch, Kennedy, Green, and Pallone (ex officio).

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23 Staff present: Melissa Froelich, Chief Counsel, Digital
24 Commerce and Consumer Protection; Adam Fromm, Director of
25 Outreach and Coalitions; Ali Fulling, Legislative Clerk,
26 Oversight & Investigations, Digital Commerce and Consumer
27 Protection; Elena Hernandez, Press Secretary; Paul Jackson,
28 Professional Staff, Digital Commerce and Consumer Protection;
29 Bijan Koochmaraie, Counsel, Digital Commerce and Consumer
30 Protection; Austin Stonebraker, Press Assistant; Madeline Vey,
31 Policy Coordinator, Digital Commerce and Consumer Protection;
32 Hamlin Wade, Special Advisor, External Affairs; Greg Zerzan,
33 Counsel, Digital Commerce and Consumer Protection; Michelle Ash,
34 Minority Chief Counsel, Digital Commerce and Consumer Protection;
35 Jeff Carroll, Minority Staff Director; Lisa Goldman, Minority
36 Counsel; Carolyn Hann, Minority FTC Detailee; Caroline
37 Paris-Behr, Minority Policy Analyst; Tim Robinson, Minority Chief
38 Counsel; Andrew Souvall, Minority Director of Communications,
39 Outreach and Member Services; and C.J. Young, Minority Press
40 Secretary.

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41 Mr. Latta. Well, good morning. I'd like to call the
42 Subcommittee on Digital Commerce and Consumer Protection to
43 order.

44 And before we begin our opening statements, I'd like to say
45 how pleased I am to have all of our FTC commissioners before us
46 today.

47 And what I'd like to do before I begin my opening remarks
48 is introduce our FTC commissioners.

49 Today, we have Chairman Joe Simons, who was sworn into office
50 on May 1st. Before joining the commission, the chairman was a
51 partner at Paul, Weiss and co-chair of the firm's anti-trust
52 group.

53 He previously served at the commission in various positions
54 between 1987 and 1989 as well as 2001 to 2003.

55 Next, we have Commissioner Maureen Ohlhausen, who was sworn
56 into office on April the 4th, 2012, and served as acting FTC
57 chairman between January 2017 and May 1st, 2018.

58 Prior to joining the FTC she was a partner at Wilkinson Barker
59 Knauer, LLP. She previously served at the commission for 11 years
60 in various capacities and leadership roles.

61 We thank the commissioner for her leadership for the past
62 15 months when she was acting chair and for her work at the agency.

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63 Commissioner Noah Phillips was sworn into office on May 2nd,
64 2018. Before joining the commission he served as chief counsel
65 to Senator John Cornyn of Texas.

66 Commission Rohit Chopra was also sworn in on May 2nd, 2018.
67 He previously served as a senior fellow at the Consumer
68 Federation of America.

69 And finally, we have Commissioner Rebecca Slaughter, sworn
70 in on May 2nd, 2018, and prior to joining the commission,
71 Commissioner Slaughter served as chief counsel to Senator Chuck
72 Schumer of New York.

73 Our witnesses have a strong fidelity to public service and
74 they are once again being asked to serve the American people to
75 maintain competitive markets and to protect consumers against
76 unfair and deceptive acts and practices, and again, we thank you
77 very much for being with us today.

78 And at this time now, I'll recognize myself for a five-minute
79 opening statement.

80 Our hearing today will focus on oversight of the Federal
81 Trade Commission. The FTC functions as the top cop on the beat
82 and keeps consumers safe and to promote a vibrant free market
83 in the United States.

84 We look forward to working with the FTC on specific issues

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85 relating to this subcommittee's jurisdiction, including
86 self-driving cars, data security, the Internet of Things,
87 blockchain technologies, privacy issues, deceptive advertising,
88 robocalls, and more.

89 Emerging consumer protection issues are at the forefront
90 of this committee. Recently, I joined Chairman Walden, Chairman
91 Blackburn, and Chairman Harper, sending letters to Apple and
92 Google, asking them to explain how smartphone users' data is
93 protected, and when audio recording data and location information
94 is compiled and shared.

95 This morning, we will be sending letters to location data
96 aggregator LocationSmart, Securus, and 3CInteractive
97 Corporation.

98 We continue to remain concerned about cybercrime, estimated
99 to cost millions to the global economy each year, and how
100 businesses prioritize protecting the most sensitive data they
101 hold about individuals.

102 As we all know, there is no such thing as 100 percent perfect
103 security. We will continue to work with regulators to understand
104 what transpired in the recent high-profile breaches and what we
105 should learn from these actions for the future.

106 The Economist proclaims, "The world's most valuable resource

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107 is no longer oil, but data." I look forward to a thoughtful
108 discussion on the appropriate steps the FTC is considering,
109 including the chairman's recently announced hearings on 21st
110 century challenges.

111 In my remaining time, I would like to hear how Chairman Simons
112 will work to utilize the FTC's annual funding to its greatest
113 need and impact, judiciously using the taxpayers' dollars,
114 including on the FTC's current priorities, authorities, and
115 performance, including its human resources efforts at securing
116 and retaining the best experts in the fields of antitrust and
117 consumer protection.

118 While we are in a challenging fiscal environment, the House
119 Appropriations Committee approved two million more dollars to
120 the FTC than the agency requested for fiscal year 2019.

121 I am also encouraged by the large refunds the FTC has been
122 able to return directly to consumers, most recently to Uber
123 drivers and customers who bought deceptively marketed bed bug
124 products, consumers in both cases receiving average checks over
125 \$200.

126 This is a unique tool in the FTC toolbox. The FTC has
127 returned over \$543 million to consumers and deposited \$94 million
128 in the U.S. Treasury. FTC orders in the Volkswagen, Amazon, and

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129 Net Spend matters required defendants to self-administer consumer
130 refund programs worth more than \$11.5 billion.

131 The FTC enforcement authorities are broad and far reaching.

132 The unique position of the FTC as the civil law enforcement agency
133 for the majority of the U.S. economy cannot be taken lightly.

134 Calls for expanded rulemaking authority, shifting the agency
135 from its expertise in enforcement to regulatory and rulemaking,
136 raises serious questions for me because Congress has explicitly
137 granted the agency rulemaking that has not been utilized in years.

138 Some may argue that the FTC is not equipped to handle the
139 challenges of the day, but I believe their actions speak louder
140 than words. The FTC has vigorously defended its jurisdiction
141 and consumers and we have no reason to believe that will stop
142 any time soon.

143 Finally, the FTC plays an important enforcement role in the
144 EU-U.S. Privacy Shield framework, particularly relating to
145 compliance and enforcement of U.S. businesses.

146 With the second annual review of the Privacy Shield by the
147 European Commission coming this fall, we want to hear about FTC's
148 and the commissioners' roles, and what can this committee do to
149 help make sure that 3,100 businesses, including small businesses,
150 continue to have access to the Privacy Shield.

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151 Again, at this time I want to thank our witnesses for being
152 here today, and this time I am going to yield to the gentle lady
153 from Illinois, the ranking member of the subcommittee, for five
154 minutes for an opening statement.

155 Ms. Schakowsky. Thank you so much, Mr. Chairman, for
156 holding this hearing on the FTC and I want to welcome Chairman
157 Simons. I know you're new to the job. I look forward to meeting
158 with you.

159 Today's hearing really comes down to two questions: is the
160 Federal Trade Commission equipped to fulfill its mission of
161 protecting consumers and what can Congress do to make it more
162 effective -- a more effective consumer advocate.

163 The FTC is -- to echo the chairman, is the top cop on the
164 beat, protecting both the public and businesses against unfair,
165 deceptive, fraudulent, or anti-competitive practices through the
166 consumer protection and anti-trust authorities.

167 As the economy continues to change and expand, the FTC has
168 had to adapt to this new economy and as our social networks,
169 shopping, banking, and other forms of communication and
170 businesses move to the internet, the FTC has changed, bringing
171 in more technology experts.

172 At the same time, many suggest that the commission needs

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173 more technology experts, even though its resources are as tight
174 as ever.

175 I am concerned that we are asking one of our country's most
176 important consumer agencies to choose which protections it will
177 be able to enforce. I hope we will work together to ensure that
178 the FTC has all the resources that it needs to maintain consumer
179 protection and a fair marketplace.

180 From a regulatory standpoint, it's time to look at ways to
181 reduce barriers to FTC consumer protection rulemaking. The FTC's
182 ability to move forward with important rulemaking is much more
183 limited than those at other agencies.

184 In the rapidly changing climate of commerce today,
185 rulemaking must be efficient and timely to keep pace.
186 Specifically, I would like to discuss how well the FTC is
187 protecting consumers' privacy and what they are doing to promote
188 data security.

189 It's my belief that on data security this committee and
190 Congress should be giving the FTC the tools it needs to do more.

191
192 Ranking Member Pallone and I have introduced H.R. 3895, the
193 Secure and Protect America's Data Act, which gives the FTC
194 rulemaking authority and civil penalty authority for data

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195 security breach notification.

196 These issues are becoming more important for Americans, not
197 less. In our hearing last October with former Equifax CEO Richard
198 Smith, I asked him if, as a consumer, can I opt out of Equifax
199 -- after all, I never opted in.

200 Equifax collects my data whether I want them to do it or
201 not and now my data is at risk of being shared because Equifax
202 failed to adequately protect it, and the answer was, sadly, yes,
203 I don't have an opportunity to opt out.

204 It would be one thing if that breach were an isolated
205 incident, and it wasn't. We saw this with Facebook and we saw
206 this under Uber -- saw this with Uber.

207 In the case of Uber, it actually paid the hackers \$100,000
208 before reporting the incident to the FTC.

209 This can't be standard industry practice. We need to change
210 that power balance by strengthening consumer protections. With
211 the FTC as our partner, we, as Congress, must work to strengthen
212 the agency to face the 21st century challenges.

213 Many of these new marketplaces, which are often highly
214 concentrated, are failing American consumers. Part of the FTC's
215 mission is the issue of anti-trust and, as we saw this morning
216 with the EU leveling \$5.1 billion fine on Google, strong consumer

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217 protection and robust competition go hand in hand, and that's
218 why Congress and consumer watchdogs must step in.

219 I welcome the new commissioners, Chairman Simon and
220 Commissioners Phillips, Chopra, and Slaughter. Did I miss
221 somebody?

222 Commissioner Simons, Phillips, Chopra, and Slaughter, and
223 I want to thank Commissioner -- I am going to say it wrong --
224 Ohlhausen, for her work on the commission and her stewardship
225 during the transition.

226 I look forward to hearing your perspective, all of you, on
227 these issues, and I yield back.

228 Mr. Latta. Thank you. The gentlelady yields back.

229 The chair now recognizes the gentleman from Oregon, the
230 chairman of the full committee, for five minutes for an opening
231 statement.

232 The Chairman. Well, good morning, Mr. Chairman, and to the
233 members of the FTC, good morning. Welcome before the Energy and
234 Commerce Committee.

235 We are delighted you're here. We want to welcome our five
236 distinguished public servants and welcome to the committee. We
237 have a lot of work to do. So do you, and so we appreciate your
238 counsel.

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239 While our economy is the driver of so much growth and
240 opportunity for Americans, there are still, unfortunately, some
241 bad actors and the Federal Trade Commission is one of the top
242 cops on the beat.

243 It is charged with the dual mission of competition and
244 consumer protection across large segments of the United States
245 economy and this committee's jurisdiction.

246 So we need an FTC to follow its statutory authority to protect
247 consumers from unfair, deceptive, and anti-competitive
248 practices, both online and off.

249 Recent data security incidents involving Facebook, Equifax,
250 Uber, and other companies continue to raise concerns about the
251 various aspects of protecting consumers in a data-driven economy.

252 I understand the commission does not, for good reason,
253 comment on open investigations -- we won't ask you to do that
254 -- but I would emphasize that data security incidents involving
255 sensitive, personal, and financial information are a significant
256 threat to United States consumers and businesses and we are laser
257 focused on these issues here at the Energy and Commerce Committee.

258 The revelations surrounding Facebook and Cambridge
259 Analytica have brought the issue of privacy of consumers' data
260 and information in the age of pervasive social media to the

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261 forefront.

262 In fact, Mark Zuckerberg sat in that chair in the middle
263 for five hours not long ago. Particularly with Facebook being
264 under a consent order with the FTC, we are closely evaluating
265 the tools used by the Federal Trade Commission in cases as that
266 matter moves forward.

267 Two weeks ago, we asked Apple CEO Tim Cook and Alphabet CEO
268 Larry Page to explain how their companies use audio recording
269 data as well as locational information collected on iPhone and
270 Android smartphones. Consumers want to know who's tracking them
271 and how.

272 And following reports that location data aggregators
273 obtained locational data from U.S. wireless carriers, in turn
274 selling it to other firms, this morning we will be sending letters
275 to LocationSmart, Securus, and 3CInteractive Corporation to probe
276 their data handling and use practices.

277 We have pursued, and will continue to pursue, important
278 oversight work on these issues and we will explore the question
279 of whether there are improvements in the current privacy
280 regulations that would increase consumer understanding of how
281 data flows support the global economy.

282 We do not want to unduly saddle companies with unnecessary

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283 regulations or impose compliance burdens that will not result
284 in any meaningful impact for consumers. But we will ensure
285 companies are being responsible and that they do not misuse
286 consumer data, period.

287 This is the over reaching reason I support the Federal
288 Communications Commission's Restoring Internet Freedom Order,
289 which reaffirms the FTC's authority over both ISPs -- internet
290 service providers -- and tech companies alike.

291 This authority is critical for enforcing data privacy
292 practices, promoting a free and open internet, and protecting
293 consumers from anti-competitive behaviors across the digital
294 ecosystem.

295 So as we consider these issues, I reiterate my invitation
296 to the technology company CEOs to come to Congress, come to
297 Washington, D.C., engage with us and talk directly to the
298 committee and the public about your practices.

299 Our goal is to work with all stakeholders on how best to
300 incentivize data security and help protect personal and financial
301 data.

302 So I am encouraged to have all of you here today because
303 I know you each understand the importance of these issues and
304 the complexity of these issues, and the role that the Federal

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305 Trade Commission has in protecting consumers.

306 So we look forward to your testimony. Again, thanks for
307 being here before the committee and with that, unless any other
308 members on our side want the remainder of my time, I would be
309 happy to yield back.

310 Mr. Latta. Seeing none, the gentleman yields back the
311 balance of his time.

312 The chair now recognizes the gentleman from New Jersey, the
313 ranking member of the full committee, five minutes for an opening
314 statement.

315 Mr. Pallone. Thank you, Mr. Chairman.

316 Today's hearing focuses on the important work of the Federal
317 Trade Commission.

318 I want to congratulate and welcome the new commissioners:
319 Chairman Simons, Commissioners Phillips, Chopra, and Slaughter,
320 and welcome back Commissioner Ohlhausen -- I guess I am
321 pronouncing it right.

322 The FTC plays a critical role in protecting consumers
323 nationwide. It has the dual mission to prevent anti-competitive
324 business practices and protect consumers from unfair or deceptive
325 actions.

326 It's an enormous endeavor covering many industries and

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327 issues. It works to stop anti-competitive business practices
328 that are likely to leave the higher prices and lower quality of
329 goods and services and at the same time it works to protect
330 consumers from false advertising, annoying telemarketing, data
331 throttling, and other forms of fraud.

332 While the FTC has had successes such as its case against
333 Volkswagen, in which it obtained \$11 billion in compensation for
334 consumers who purchased clean diesel cars that turned out not
335 to be clean, the commission should be doing more, in my opinion.

336 But in order to do more in support of consumers, the FTC
337 needs the support and legislative authorizations from Congress.

338 Unfortunately, instead of working with the FTC, this committee,
339 just two years ago, sought to further reduce the already limited
340 authorities of the FTC and I am hopeful we will not see that effort
341 again.

342 The FTC is a relatively small agency, especially given the
343 breadth of its mission. In the area of data privacy and security
344 -- one of the more critical consumer protection issues today --
345 FTC's entire division is only 45 full time employees and only
346 35 of those are attorneys who are able to bring enforcement
347 actions.

348 These actions are important since the commission's

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349 rulemaking authorities are hindered by overly burdensome
350 requirements that effectively nullify its ability to establish
351 regulations for consumer privacy and data security. And even
352 its enforcement authorities are limited.

353 Most often the FTC can only get an injunction stopping the
354 unfair or deceptive acts for a first time violation. The FTC
355 cannot hit the offender where it hurts, with a monetary penalty.

356
357 A slap on the wrist with a promise not to do the bad act
358 again often fails to be a sufficient deterrent to further bad
359 action. Only if the company commits the same unscrupulous act
360 again after promising in a consent that it would stop such conduct
361 can the FTC seek fines, and that limitation on fining authority
362 has allowed some companies to repeatedly take advantage of
363 consumers without real consequences.

364 Just a few months ago, we were here listening to Mark
365 Zuckerberg apologize yet again for Facebook's failure to properly
366 inform users of how their data would be shared.

367 If the FTC was able to fine Facebook in 2011 the first time
368 it found that Facebook failed to properly notify users, we may
369 not have seen the Cambridge Analytica scandal.

370 And to make matters worse, FTC has only 40 employees

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371 reviewing the hundreds of consent decrees that are in effect.

372 Those employees cannot possibly know whether any one company
373 is keeping the commitments it made in the consent decree.

374 After all, Facebook was under a consent decree and we saw
375 what that wrist slapping did -- nothing. And yes, Equifax was
376 under a consent decree as well.

377 So today's hearing is not on the breaches at Facebook or
378 Equifax but those breaches are good examples for exploring how
379 the FTC could better fulfill its mission and I look forward to
380 hearing from the commissioners about their ideas for the future
381 of the FTC and hope we can discuss ways to support the FTC's dual
382 mission and give it the tools that it needs.

383 And I'd like to yield the time I have left to Ms. Matsui.

384 Ms. Matsui. Thank you very much, Ranking Member Pallone.

385 I've discussed the potential of blockchain applications in
386 this subcommittee before. These include as possibility to
387 facilitate spectrum sharing as next-generation broadband
388 networks are deployed, maintain patient health records and secure
389 business transactions and communications between the Internet
390 of Things networks.

391 In its basic and essential element and function, blockchain
392 is a decentralized ledger technology. But as the hype

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393 surrounding blockchain and its applications grow, how exactly
394 blockchain is defined has become less clear.

395 More fundamentally, there is no agreed upon definition of
396 blockchain. So I am working on legislation that would direct
397 the Department of Commerce to convene a working group or federal
398 and industry stakeholders to develop a consensus-based agreed
399 upon definition of blockchain.

400 I believe a common definition of blockchain could greatly
401 assist in its development and deployment. I invite all of you
402 here on the panel to work with me on this as well as my colleagues
403 here and I hope that we can do this as quickly as possible.

404 Thank you, and I yield back.

405 Mr. Pallone. And I yield back, Mr. Chairman.

406 Mr. Latta. Thank you very much. The gentleman yields back
407 the balance of his time and that will conclude with member opening
408 statements.

409 The chair would like to remind members that pursuant to
410 committee rules all members' opening statements will be made part
411 of the record.

412 And, again, I want to thank all of our witnesses for appearing
413 before us today to take time to testify before the subcommittee.

414 Today's witnesses will have the opportunity to give a five-minute

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415 opening statement followed by a round of questions from the
416 members of the subcommittee.

417 Chairman Simons, you are recognized for five minutes. If
418 you'd just pull the mic up close and turn the button on, we'll
419 -- glad to have you here today.

420 Thank you.

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421 STATEMENTS OF THE HONORABLE JOSEPH SIMONS, CHAIRMAN, FEDERAL
422 TRADE COMMISSION; THE HONORABLE MAUREEN OHLHAUSEN, COMMISSIONER,
423 FEDERAL TRADE COMMISSION; THE HONORABLE NOAH PHILLIPS,
424 COMMISSIONER, FEDERAL TRADE COMMISSION; THE HONORABLE ROHIT
425 CHOPRA, COMMISSIONER, FEDERAL TRADE COMMISSION; THE HONORABLE
426 REBECCA SLAUGHTER, COMMISSIONER, FEDERAL TRADE COMMISSION

427

428 STATEMENT OF JOSEPH SIMONS

429 Mr. Simons. Thank you so much.

430 Chairman Latta, Ranking Member Schakowsky, and members of
431 the subcommittee, I am Joe Simons and I am the new chairman of
432 the Federal Trade Commission. It's an honor to appear before
433 you today, especially alongside my fellow commissioners.

434 I'd also like to thank you for being so supportive of the
435 FTC's resource needs over the years.

436 As you've already said, the FTC is a highly productive and
437 effective independent agency with a broad mission -- to protect
438 consumers and to maintain competition.

439 The FTC also has a long history of bipartisanship and all
440 of us here today are very committed to continuing that strong
441 tradition.

442 I am going to focus my oral remarks today primarily on data

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443 security and privacy. Year after year, these two issues topped
444 the list of consumer protection priorities at the FTC. The
445 commission has challenged numerous privacy and security practices
446 under Section 5 of the FTC Act.

447 Our program in these areas, which includes enforcement as
448 well as consumer and business education, has been highly
449 successful within the limits of our authority. Section 5 is an
450 imperfect tool. In my view, we do need more authority. I support
451 data security legislation that would give us three things: one,
452 the ability to seek civil penalties to effectively deter unlawful
453 conduct; two, jurisdiction over nonprofits and common carriers;
454 and three, the authority to issue implementing rules under the
455 Administrative Procedure Act.

456 Make no mistake, however. Under my leadership, privacy and
457 data security will continue to be an enforcement priority and
458 the FTC will use every tool in its arsenal to address consumer
459 harm to the extent we can.

460 To date, the commission has brought more than 60 cases
461 alleging that companies failed to implement reasonable data
462 security safeguards as well as dozens of general privacy cases.

463 We have aggressively pursued privacy and data security cases
464 in myriad areas including financial privacy, children's privacy,

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465 health privacy, and the Internet of Things.

466 Recently, the European Union put into effect its general
467 data protection regulation. The FTC will be watching carefully
468 and assessing the impact of this new regime to see what lessons
469 we can learn that might be applicable to the U.S.

470 In addition, GDPR, like its predecessor, imposes
471 restrictions on the ability of companies to transfer consumer
472 data from the EU to other jurisdictions, including the U.S.

473 The EU-U.S. Privacy Shield framework provides a mechanism
474 that enables data to be legally transferred from Europe to the
475 United States and the FTC is committed to strenuously enforcing
476 Privacy Shield.

477 Finally, let me mention one additional item. The FTC has
478 the tradition of self-critical examination, and in that vein,
479 we recently announced our hearings on competition and consumer
480 protection in the 21st century, and these will begin in the fall.

481 This series of public hearings will explore whether we need
482 to adjust our enforcement efforts, our priorities, and policies
483 in light of changes in the marketplace and new thinking.

484 The issues to discuss include whether we need to change the
485 governing standard for anti-trust enforcement, whether merger
486 enforcement has been too lax, our remedial authority with respect

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487 to privacy and data security, and other issues.

488 A discussion of these issues at the hearing along with the
489 public comments that will be collected throughout the hearings
490 will help inform our thinking. The FTC is committed to maximizing
491 the use of its resources, to enhance its effectiveness in
492 protecting consumers, and promoting competition, to anticipate
493 and to respond to changes in the marketplace, and to meet current
494 and future challenges.

495 We look forward to continuing to work with the subcommittee
496 and Congress, and I look forward to answering your questions.

497 Thank you so much.

498 [The prepared statement of Mr. Simons follows:]

499

500 *****INSERT 1*****

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501 Mr. Latta. Thank you very much for your statement.

502 And, Commissioner Ohlhausen, you are recognized for five
503 minutes.

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504 STATEMENT OF MAUREEN OHLHAUSEN

505

506 Ms. Ohlhausen. Chairman Latta, Ranking Member Schakowsky,
507 and members of the subcommittee, I am pleased to appear before
508 you today alongside my FTC colleagues.

509 I've been a commission for six years and was honored to be
510 named acting chairman in January 2017 and to serve in that capacity
511 until May 2018.

512 Having a leadership role at the FTC provides a unique insight
513 into the vital protections the agency provides for the American
514 consumer and I am proud of the work that we'll discuss in today's
515 hearing.

516 Although the FTC has many accomplishments, I will limit my
517 remarks today to two areas -- process reforms and competition
518 enforcement.

519 First, process reforms -- in April 2017, I directed the FTC's
520 Bureau of Consumer Protection to identify ways we could streamline
521 our civil investigative demands, or CIDs, which are the agency's
522 version of administrative subpoenas.

523 This initiative was in part in response to concerns raised
524 by members of Congress that FTC investigations often imposed undue
525 burdens on legitimate companies.

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526 Now, of course, the FTC must remain an effective and
527 aggressive protector of the American consumer. That is our
528 primary mission. But we should also look for ways to be more
529 efficient.

530 These CID reforms have been in effect for a year and I believe
531 the agency has successfully navigated making the CID process
532 friendlier to legitimate businesses without sacrificing our
533 effectiveness.

534 For example, one difficulty for small business is wading
535 through pages of legalese. To lighten this burden, the FTC now
536 includes a plain language description of the CID process in every
537 CID we issue and we've posted FAQs for small businesses on our
538 website to help them.

539 We are also being more selective about the time frame for
540 requested documents or information. Obviously, the broader the
541 time frame the greater the burden on companies.

542 It is now our policy where appropriate to limit the time
543 frames in our CIDs to more recent years and, of course, when there
544 is good cause, we will seek a broader range of documents and
545 information. But that is now the exception, not the rule.

546 These are just a handful of the ways that we've reformed
547 our CID process so that we can continue to protect consumers

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548 without placing undue burdens on legitimate companies.

549 And turning -- now turning briefly to competition
550 enforcement, I would like to make just a few points. In fiscal
551 year 2017, the FTC challenged 23 mergers and obtained remedies
552 for consumers in 15 others, maintaining, essentially, the same
553 merger enforcement pace during the beginning of this
554 administration as it had during the previous one.

555 And the brisk pace continues in fiscal year 2018. The agency
556 has already undertaken a number of merger challenges including
557 Tronox, Williamson, and Otto Bock, all of which are currently
558 in litigation.

559 During the 2017-2018 period, the commission also stopped
560 three mergers when the parties abandoned them after we sued, and,
561 in addition, Walgreen's substantially restructured its proposed
562 acquisition of Rite-Aid due to commission concerns.

563 And I would like to highlight two merger cases that focused
564 on important points about our competition mission. Draft
565 Kings-FanDuel was a proposed merger of two internet platforms
566 offering so-called daily fantasy sports contests and the FTC sued
567 to block the deal, finding that these two companies were the
568 leading providers and that other forms of fantasy sports were
569 inadequate substitutes.

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570 And, importantly, the commission rejected arguments that
571 the technology was too nascent and fast moving to be able to draw
572 reliable conclusions, and in the face of the FTC's challenge,
573 the companies ultimately abandoned their transaction.

574 And the other case I would like to briefly mention was
575 CDK-AutoMate, which involved two providers of specialized
576 software used by auto dealers. Our challenge to the deal noted
577 that the current levels of competition between the parties likely
578 understated the competitive significance of the smaller firm.

579 In effect, the larger firm was buying out this promising
580 upstart before it could grow to become a much more serious
581 competitive threat, and in the face of the FTC's challenge the
582 parties abandoned their deal.

583 Both of these cases were big wins for U.S. consumers but
584 they also show how the commission can use its existing authority
585 to intervene in a factually grounded economically nuanced way,
586 even in fast-moving high technology markets.

587 In addition to merger review, we also brought a number of
588 important conduct cases including several challenging
589 anti-competitive behavior by drug manufacturers.

590 And finally, our Economic Liberty Task Force, which I
591 launched last year, has helped to spotlight unnecessary or over

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592 broad occupational licensing which often disproportionately
593 harms those near the bottom of the economic ladder and burdens
594 our military families.

595 So thank you for your time and I look forward to your
596 questions.

597 [The prepared statement of Ms. Ohlhausen follows:]

598

599 *****COMMITTEE INSERT 2*****

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31

600 Mr. Latta. And thank you very much for your testimony today.

601 And Commissioner Phillips, you are recognized for five

602 minutes.

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603 STATEMENT OF NOAH PHILLIPS

604

605 Mr. Phillips. Thank you.

606 Chairman Latta, Ranking Member Schakowsky, distinguished
607 members of the subcommittee, thank you all for the opportunity
608 to be before you today.

609 I am honored to be here with my fellow commissioners, and
610 from our testimony I hope you see the important work that the
611 FTC and its staff do every day on behalf of American consumers.

612 As you all know, our economy is increasingly globalized,
613 digitized, and connected. These changes generate incredible
614 opportunity but they also pose new problems for consumers such
615 as traditional scams that now thrive online and new
616 internet-enabled frauds, and they also raise important
617 enforcement challenges like the enhanced ability of scammers to
618 act anonymously or to move their ill-gotten gains abroad and
619 outside of our jurisdiction.

620 They also create roadblocks to international law enforcement
621 cooperation. Congress has been an essential ally in this fight.

622 In 2006, it passed the U.S. SAFE WEB Act. SAFE WEB allows
623 the FTC to share evidence with and provide investigative
624 assistance to foreign authorities in cases involving spam,

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625 spyware, privacy violations, and data breach.

626 It also confirms our authority to challenge foreign-based
627 frauds that harm U.S. consumers or involve material conduct in
628 the United States.

629 Using SAFE WEB, the FTC has worked with authorities abroad
630 to stop illegal conduct and secure millions in judgments from
631 fraudsters and sometimes even criminal convictions.

632 The FTC uses SAFE WEB authority in important international
633 privacy cases. We collaborated with Canadian and Australian
634 privacy authorities on the massive data breach of the
635 Toronto-based adult dating website ashleymadison.com, and we
636 worked again with Canadian authorities on FTC's first children's
637 privacy and security case involving connected toys, a settlement
638 with electronic toy manufacturer VTech Electronics under the
639 Children's Online Privacy Protection Act.

640 In total, the FTC has responded to more than 125 SAFE WEB
641 information sharing requests from 30 foreign enforcement
642 agencies. We have issued more than 110 civil investigative
643 demands in more than 50 investigations on behalf of foreign
644 agencies, civil and criminal.

645 The FTC has collected millions of dollars in restitution
646 for injured consumers, both foreign and domestic. SAFE WEB helps

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647 protect Americans by policing and instilling confidence in the
648 digital economy.

649 But it sunsets in 2020. The commission respectfully
650 requests that Congress reauthorize this authority and eliminate
651 the sunset provision.

652 Our international efforts support American business
653 leadership in the global digital economy by enabling
654 transatlantic data flows and protecting privacy.

655 As Chairman Latta rightly highlighted in his remarks, the
656 FTC works with the Department of Commerce on three key
657 cross-border data transfer programs including the EU-U.S. Privacy
658 Shield.

659 Privacy Shield provides a legal mechanism for companies to
660 transfer personal data from the EU to the U.S. with strong privacy
661 protections and the FTC enforces these companies' Privacy Shield
662 promises under Section 5 of our organic statute.

663 We are committed to the success of Privacy Shield and the
664 other cross-border data transfer mechanisms. We have brought
665 nearly 50 actions to enforce them including four under the new
666 Privacy Shield, one announced just two weeks ago.

667 Privacy Shield is an important mechanism for encouraging
668 commerce and protecting privacy. Enforcement of it is and will

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669 remain a priority for the agency.

670 Thank you for your time and attention and I look forward
671 to answering any questions that you have.

672 [The prepared statement of Mr. Phillips follows:]

673

674 *****COMMITTEE INSERT 3*****

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36

675 Mr. Latta. Again, thank you very much for your testimony.

676 And Commissioner Chopra, you are recognized for five

677 minutes.

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678 STATEMENT OF ROHIT CHOPRA

679

680 Mr. Chopra. Chairman Latta, Ranking Member Schakowsky, and
681 members of the subcommittee, thank you for the opportunity to
682 testify and discuss data security and privacy.

683 According to survey data, 91 percent of adults believe they
684 have lost control about how companies are collecting and using
685 their personal information.

686 News reports of data breaches and disclosure of sensitive
687 data have become routine. On the dark web, stolen credit card
688 and Social Security numbers and social media profiles can be
689 bought and sold.

690 For many Americans, the situation seems hopeless and they
691 feel powerless, and Washington cannot be sitting on the sidelines.

692 We must confront the risks to our economy, our society, and
693 national security of inadequate data security and privacy, and
694 the cost of inaction is growing.

695 According to an industry study, over 15 million Americans
696 were a victim of identity theft in some form in 2016, leading
697 to \$16 billion of losses.

698 The majority of these Americans had their records accessed
699 in a data breach in the years prior to their identity theft.

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700 When we talk about data security in Washington we typically focus
701 on protecting power grids, payment networks, and other critical
702 infrastructure to avoid a crippling attack.

703 But we also know that the infiltration of commercial holdings
704 of consumer data can also cause chaos. Large-scale breaches of
705 unencrypted data are increasing these risks and we must do more
706 to secure personal data from falling into the wrong hands.

707 Chairman Simons is right. The FTC cracks down on illegal
708 practices whenever we can. But I think our existing toolkit won't
709 do the trick. In too many situations, our resolution is to tell
710 a lawbreaking company to simply stop breaking the law.

711 To truly make a difference when it comes to data protection
712 we need the ability to deter misconduct through financial
713 penalties and sensible safeguards that can evolve with the
714 marketplace and when it comes to privacy the United States should
715 lead.

716 New privacy protections from Europe and California are
717 advancing but we shouldn't feel we have to simply copy and paste.
718 We should be leading.

719 I believe privacy and competition can go hand in hand,
720 especially when consumers can access their data in portable and
721 interoperable formats.

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722 We can increase privacy protections without crowning
723 corporate royalty. We don't need to start from scratch either.
724 Congress can build upon existing privacy laws such as the
725 Children's Online Privacy Protection Act.

726 Twenty years ago, incumbents warned that this bipartisan
727 effort to protect children online would end in utter disaster
728 for our information economy and, boy, were they wrong.

729 COPPA has common sense ideas. Data collected for one
730 purpose shouldn't be used for another purpose without your
731 permission. You should have the ability to review the
732 information collected about you.

733 Companies should be up front and honest about who they're
734 sharing your data with and strong protections should be backed
735 by an enforcement regime that can hold companies and their
736 operators accountable.

737 Over the past decade, the FTC has produced scores of studies
738 and reports but now it is time for Congress to act. I am confident
739 that if Congress entrusts the Federal Trade Commission with the
740 authority and resources to do more to protect families and
741 businesses, we will deploy them efficiently and effectively while
742 continuing to promote a dynamic digital economy that truly
743 benefits all of us.

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744

Thank you.

745

[The prepared statement of Mr. Chopra follows:]

746

747

*****COMMITTEE INSERT 4*****

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748

Mr. Latta. And thank you very much for your testimony.

749

And Commissioner Slaughter, you are recognized for five

750

minutes for your opening statement.

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751 STATEMENT OF REBECCA SLAUGHTER

752

753 Ms. Slaughter. Thank you, Chairman Latta, Ranking Member
754 Schakowsky, and members of the subcommittee. Thank you for
755 inviting all of us here today.

756 I would like to use my oral remarks to highlight the critical
757 work the commission does to protect American consumers from fraud
758 and from illegal robocalls.

759 I also want to draw attention to the resource challenges
760 of the commission.

761 Although it sometimes grabs fewer headlines, fighting fraud
762 is a central part of the FTC's consumer protection mission. The
763 commission routinely tracks down and stops some of the worst
764 scams, often targeting consumers who can least afford to lose
765 money, including the elderly, members of the military, students
766 burdened by debt, and small businesses.

767 The FTC takes the lead on important initiatives to shut down
768 fraudsters and joins with our federal, state, and international
769 law enforcement partners.

770 Some recent examples of these initiatives include Operation
771 Tech Trap, a crackdown on tech support scams. Another example
772 was Operation Game of Loans, where we led the first federal and

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773 state coordinated action targeting 36 student loan debt relief
774 scams.

775 And just last month, we announced Operation Main Street,
776 an effort to stop small business scams.

777 The agency has also been at the forefront of addressing
778 deceptive moneymaking frauds involving crypto currencies,
779 bringing enforcement action and hosting a workshop to explore
780 house scammers or exploiting public interest in crypto currency
781 and how to empower and protect consumers against the growing
782 threat of exploitation.

783 This is an area we must continue to monitor closely including
784 working with stakeholders who don't traditionally engage with
785 the FTC.

786 On robocalls, few things unite Americans more than their
787 outrage over illegal robocalls and I include myself among the
788 outraged. The FTC uses every tool at its disposal to stop illegal
789 calls.

790 We've brought 137 cases targeting over 800 individuals and
791 companies responsible for billions of illegal calls to U.S.
792 consumers and we've collected over \$120 million in judgments.

793 But, as anyone with a phone knows, the problem persists.
794 While our aggressive law enforcement efforts will continue, we

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795 know that the explosion in illegal calls stems from technological
796 developments in the calling landscape.

797 Law violators can now place endless streams of calls for
798 a fraction of a cent and too often the criminals behind some of
799 the worst calling scams are located abroad, beyond the immediate
800 reach of a civil law enforcement agency.

801 Technological problems need technological solutions. The
802 FTC has been a leader in pushing industry to develop those
803 solutions, helping to spur providers and third parties into
804 offering call-blocking options.

805 However, the best long-term solution is to empower and expect
806 providers to deploy solutions at the network level that will reach
807 every consumer.

808 Effective blocking tools to stop spam should be available
809 to all consumers using every kind of phone system and carriers
810 should have both the right and the responsibility to keep their
811 systems clear of unwanted calls.

812 The FTC is currently limited in its ability to address
813 failures on the part of providers as a result of the common carrier
814 exemption to our jurisdiction. Some carriers know or have every
815 reason to know that they are passing along illegal or even
816 fraudulent calls but they are beyond our reach.

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817 Speaking as a consumer as well as an enforcement official,
818 I share the public outrage at robocalls and I am eager to work
819 with Congress to empower the FTC to do even more to combat this
820 profound nuisance.

821 Finally, I would like to say a word about our resources.
822 The FTC works tirelessly to protect consumers and advance
823 competition in an increasingly technical, digital, and
824 sophisticated marketplace.

825 Consumers rightly look to the FTC to address evolving
826 challenges and one of my top priorities is to make sure that we
827 meet those expectations successfully.

828 We have excellent expert experienced staff who want nothing
829 more than to hold lawbreakers accountable. We leverage them as
830 effectively as possible.

831 But we have more cases to bring every day. Those cases have
832 become more complex both legally and technologically and they
833 involve defendants with deep pockets and armies of attorneys.

834 Our budget has not kept pace with these developments. To
835 wit, we had more full time employees in the Reagan administration
836 than we do today.

837 It is critical that the FTC have sufficient resources to
838 support its work, particularly as demands for enforcement in so

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839 many complex areas continue to grow.

840 In addition to sufficient resources, as several of my
841 colleagues have noted, sufficient authority is critical for the
842 FTC to continue to meet the demands of the 21st century
843 marketplace.

844 Repeal of the common carrier exemption, APA rulemaking
845 authority, and related civil penalty authority would each go a
846 long way to help the FTC better meet today's challenges as well
847 as tomorrow's.

848 Thank you, and I look forward to taking your questions.

849 [The prepared statement of Ms. Slaughter follows:]

850

851 *****COMMITTEE INSERT 5*****

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852 Mr. Latta. Thank you very much for your testimony today
853 and I, again, thank all the commissioners for being with us today
854 and I will start the questioning with five minutes.

855 And Chairman Simons, if I could start with you. You bring
856 very strong anti-trust credentials to the FTC, previously serving
857 as head of the Bureau of Competition.

858 One of the priority issues of the subcommittee is the
859 consumer protection jurisdiction enforcement activities of the
860 FTC and I noted in your opening remarks you talked about especially
861 enforcement on IoT, which is -- I sponsored legislation with the
862 gentleman from Vermont and on the internet of things.

863 But we also, in the last Congress, had the working group.
864 So Internet of Things is something that we are very concerned
865 about.

866 With recent headlines highlighting the open investigations
867 of Equifax and Facebook, which I know you can't comment on, and
868 the Eleventh Circuit recent decision highlighting the
869 unenforceable order of LabMD data security case, how would you
870 describe your general approach to consumer protection
871 enforcement?

872 Mr. Simons. Our mantra is vigorous enforcement, Chairman.

873 So that's what we are all about. We are about protecting

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874 the consumer and vigorous enforcement. In addition, we are very
875 active in terms of not only trying to create a disincentive for
876 the bad guys to do the wrong thing, but in addition, to educate
877 consumers and small businesses and businesses generally to make
878 sure they do the right thing.

879 So very enforcement oriented, very vigorous, and across the
880 board. One of the things you probably noticed from the remarks
881 of the commissioners was that it was spread out in terms of
882 different subject matters and that just -- that was not by
883 accident.

884 So we are aggressive across the board whether it's data
885 security, privacy, all kinds of different fraud across the board.

886 Mr. Latta. Okay. Let me follow up. You mentioned on the
887 civil penalty authority the FTC doesn't have the civil penalty
888 authority today to enforce initial violation of the safeguards
889 rule that covers companies like Equifax.

890 Would you support civil penalty authority to enforce the
891 safeguards rule?

892 Mr. Simons. Yes.

893 Mr. Latta. Okay. Thank you.

894 Would you like to follow up on that?

895 [Laughter.]

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896 Mr. Simons. Yes. Sure.

897 So one of the problems that we have is we are able to show
898 in these cases that there is sufficient harm to show a violation
899 under the statute.

900 But in terms of our monetary remedial authority and showing
901 damage from any particular breach and tracing it to that specific
902 breach is very difficult.

903 So it really hinders our ability to seek a significant
904 monetary penalty and monetary relief and to create a sufficient
905 deterrence so that conduct doesn't occur in the future.

906 Mr. Latta. Let me follow up with another question to you.

907 Interesting -- I was listening when you were talking about your
908 announcement of the series of public hearings this year on the
909 21st century challenges to the economy and I also commend you
910 and the commission for taking a thoughtful approach to examining
911 whether the current legal, economic, and technological predicates
912 -- warrants adjustment to competition and consumer protection
913 policy.

914 Would you share your goals for the hearing including efforts
915 to update the agency's research and policy function or to set
916 the foundation for enforcement actions in policy agenda setting?

917 Mr. Simons. So we are conducting these hearings with a broad

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918 range of participants from all over the spectrum of thoughts and
919 ideas and we -- so we are going in with an open mind and we are
920 not expecting any particular outcome. But potential outcomes
921 would be things that would involve, for example, amending our
922 horizontal merger guidelines, drafting potentially new vertical
923 merger guidelines.

924 We might also -- we are going to also look at privacy and
925 data security and maybe we'll come out with strong suggestions
926 there as to -- as how to move forward maybe along the lines of
927 Commissioner Chopra's suggestions a minute ago.

928 So it's really quite -- it's really quite wide open. Last
929 time that hearings of this nature were conducted there were --
930 there were substantial action items coming out of those hearings.

931
932 This was done by then Chairman Robert Pitofsky, and one of
933 the main things that came out of that was amendments to the merger
934 guidelines relating to efficiencies.

935 There was also a lot of work done on the intellectual property
936 area. And so our goal is to try to be as effective as -- in these
937 hearings as Chairman Pitofsky was in his hearings.

938 Mr. Latta. Well, thank you very much, and my time is about
939 to expire so I am going to yield back and recognize the gentlelady

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940 from Illinois, the ranking member of the subcommittee for five
941 minutes.

942 Ms. Schakowsky. Thank you.

943 Let me just say as a probably long-term -- I've been a
944 long-term consumer advocate since I was a very young woman. So
945 I have a special place in my heart for the Federal Trade Commission
946 and I want to ask about your authorities.

947 Most agencies issue regulations under the Administrative
948 Procedures Act, which sets out notice and public comment
949 procedures for issuing regulations.

950 But unless granted APA rulemaking authority for specific
951 issues by Congress, the FTC issues rules under a different law,
952 which provides more burdensome procedures and makes it more
953 difficult for the commission to issue rules.

954 So I wanted to ask you, Mr. Chairman, do you agree that the
955 FTC currently is limited and, for example, an example I think
956 you gave in a meeting could not write rules like the open internet
957 rules written by the FCC?

958 Mr. Simons. So I generally do agree with your
959 characterization of a rulemaking authority. So our general
960 rulemaking authority is under the Magnuson-Moss Act and it is
961 considerably more burdensome than the Administrative Procedure

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962 Act. So I agree with that completely.

963 In terms of your question about the net neutrality rule,
964 I don't think that we could adopt exactly the same rule, and if
965 we were to try to do it under Magnuson-Moss, like you said, it
966 would be pretty time consuming.

967 However, what we normally do is we bring enforcement actions
968 and our sense is that those actually accomplish pretty much the
969 same thing. By doing --

970 Ms. Schakowsky. I wanted to ask about that. It says
971 without effective rulemaking authority, the FCC has focused on
972 efforts -- its efforts on law enforcement, and we've heard a number
973 of really positive examples.

974 So the -- but it seems to me the enforcement only approach
975 is not as effective as when legal standards are supported by agency
976 rulemaking.

977 Mr. Simons. I think a mix, depending on the circumstance
978 of rulemaking and enforcement, could be optimal.

979 Ms. Schakowsky. So, you know, this issue has come up often
980 in this committee's discussion of data breach legislation.
981 Previous commissions have supported APA rulemaking authority for
982 data security and breach notification.

983 Ranking Member Pallone and I have introduced a bill -- I

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984 mentioned it in my opening statement -- 3896, the Secure and
985 Protect America's Data Act -- that would require companies to
986 have reasonable data security and notify consumers in a reasonable
987 time when breaches occur.

988 So to the -- really, to the whole panel, our bill would give
989 the FTC authority to write rules on data security and breach
990 notification using APA rulemaking and I would just like to go
991 down the row and see if you would support that.

992 Mr. Simons. Yes. Without commenting on the specifics of
993 your bill I certainly support in concept what you're suggesting.

994 Ms. Schakowsky. Okay.

995 Ms. Ohlhausen. As I have previously supported data security
996 and breach notification legislation, I would also support it
997 without supporting particular details.

998 Ms. Schakowsky. I understand. You haven't -- right.

999 Thank you.

1000 Mr. Phillips.

1001 Mr. Phillips. I too support legislation, Congresswoman.
1002 I have not yet formed an opinion with respect to particular
1003 rulemakings. One of the things I look forward to are -- to in
1004 our upcoming hearings that the chairman has announced is the fact
1005 that we are going to be doing a careful study of the remedies

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1006 available to us and I look forward to learning from those.

1007 Mr. Chopra. Yes, and I would add that rules -- the
1008 development of rules is a much more participatory process than
1009 individual enforcement actions and it also gives clear notice
1010 to the marketplace rather than being surprised, and I think it
1011 would be a good idea.

1012 Ms. Schakowsky. Good point. Yes.

1013 Ms. Slaughter. Yes. Like my colleagues, I haven't studied
1014 your particular bill. But as you describe it, it's something
1015 that I would very much support.

1016 Ms. Schakowsky. Let me just say, the word partner came up
1017 a good deal in various testimonies, both on the committee and
1018 on the panel, and I hope that we can use that approach.

1019 I want to see if -- Chairman Simons, if the FTC had APA
1020 rulemaking authority now, would you direct staff to begin the
1021 rulemaking process for data security and breach notification?

1022 Mr. Simons. Sure. Yes.

1023 Ms. Schakowsky. Okay. Even though FTC's current
1024 rulemaking procedures are burdensome, couldn't the FTC issue an
1025 advanced notice of proposed rulemaking on or -- rulemaking or
1026 a notice of inquiry to collect data and get the process started
1027 now?

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1028 Mr. Simons. We could -- we could certainly start a
1029 rulemaking under Mag-Moss. It would just, you know, be time
1030 consuming and really resource intensive and so there's an issue
1031 about whether we want to start that, not knowing whether we could
1032 finish it under --

1033 Ms. Schakowsky. If I could just have a couple more seconds.
1034 You know, we've had these high-profile hearings from Equifax,
1035 from -- you know, Zuckerberg was sitting in that chair, as the
1036 chairman mentioned.

1037 And yet, we really have not moved forward, I think, in doing
1038 something about these data breaches and the mistakes that have
1039 been made. I really look forward to working with you and meeting
1040 with all of you.

1041 Thank you.

1042 Mr. Latta. Thank you very much. The gentlelady's time has
1043 expired and the chair now recognizes the gentleman from Oregon,
1044 the chairman of the full committee, for five minutes.

1045 The Chairman. Thank you, Mr. Chairman, and I want to thank
1046 you for your leadership in this area on data breach, data security,
1047 and all -- I think you have had, what, four roundtables including
1048 one yesterday, I think, with how many participants?

1049 Thirty-eight?

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1050 Yes, we know this is pretty complicated. If there were an
1051 easy answer we'd all do it because -- I mean, I think of my
1052 colleague from Illinois, Ms. Schakowsky, said, you know, she
1053 worries about her data being breached by Equifax.

1054 I don't think you have to worry. I think it is.

1055 [Laughter.]

1056 You know, I think the worry part is gone and that's the
1057 tragedy of it all is we don't have control over our data and we
1058 have laws on the books in some cases. Companies have trust
1059 obligations in other cases and they don't have the security in
1060 most cases, and so it is something we are all concerned about
1061 as consumers and as policy makers and enforcers.

1062 And so it's something this committee is very concerned about
1063 and, as I say, we've been trying to find if there's an eye in
1064 that needle to thread legislation to get to data breach -- data
1065 notification. Hold people accountable and we are closing in on
1066 it.

1067 And, like others on the committee, I think we are all
1068 consumers and I care deeply about putting the consumer first.

1069 That's been part of my mantra as chairman of the committee,
1070 because if you do that you have competitive markets. You have
1071 innovation and you have price competition and you have choice

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1072 and consumers benefit.

1073 And, Ms. Slaughter, your comment about robocalls I am fully
1074 in agreement with. I remember when pop-up ads were a nuisance.

1075

1076 I tongue in cheek suggested death penalty for those people,
1077 because you couldn't do anything on your computer. You had
1078 bazillions of these pop-up ads.

1079 We had a hearing on robocalls and the private sector -- the
1080 technology sector is being pretty inventive and one of the
1081 witnesses has an app that they market -- I won't promote a
1082 particular one -- but it actually figures out to answer the call
1083 and then pretends to be real and keeps the caller on the line
1084 for half an hour.

1085 I love that kind of thing. Run their bill up, drive them
1086 crazy. And so, you know, we have a lot of young kids out there
1087 with brilliant minds that can develop these apps and help us in
1088 this endeavor.

1089 But one of the big challenges, of course, is a lot of this
1090 stuff is overseas and hard to -- even for you or for us or anybody
1091 to get their hands around. Boy, we'd have our hands around their
1092 necks.

1093 So, Chairman Simons, what role do you believe anti-trust

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1094 plays with respect to consumer protection? Give us your thoughts
1095 on that as the chairman. Try -- yes.

1096 Mr. Simons. It's similar, Mr. Chairman, to what you just
1097 suggested. So the more competition, the more likely it is the
1098 consumer is going to be benefited, and what goes hand in hand
1099 is that competition and consumer protection -- consumer
1100 protection in terms of good information in the marketplace --
1101 nondeceptive information in the marketplace, an efficient
1102 advertising market, those are things that make firms compete
1103 stronger and it drives competition.

1104 So we want to have those two things. We want to have --
1105 we want to have vigorous competition. We want to make sure that
1106 firms are not behaving anti-competitively and at the same time
1107 we want to make sure that consumers have the information that
1108 is necessary for them to make the right decisions and right choices
1109 in the marketplace.

1110 The Chairman. And with this emerging digital economy
1111 that's, well, fully underway but, you know, it's emerging every
1112 day there's something new, you see we have legacy rules.

1113 We have industries that are built upon those and then you
1114 have a new entrant into the market and then you have consolidation
1115 and mergers and people trying to compete. So what questions are

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1116 you most focused on regarding the changing digital nature of the
1117 U.S. economy during your public hearings.

1118 Mr. Simons. We are focused on a very broad range of things,
1119 everything from whether we're -- whether the consumer welfare
1120 standard, which has been the kind of consensus standard for the
1121 last 20 or 30 years -- whether that needs to be changed or not
1122 -- whether the way we have done merger analysis in the past 20
1123 or 30 years has been appropriate -- whether that's been too lax.

1124 We are also -- and then we are also focused on the consumer
1125 protection side, particularly in terms of privacy and data
1126 security.

1127 In terms of -- one of the things that I -- as I mentioned
1128 in my oral remarks that we are very -- that we are very focused
1129 on is the potential tradeoff between privacy on the one hand and
1130 data security on the one hand and competition on the other hand.

1131 The Chairman. Right.

1132 Mr. Simons. We are a little nervous that if you do privacy
1133 in the wrong way, have it go too far in one direction that you
1134 might end up reducing competition.

1135 You might create a situation in which you entrench the large
1136 tech platforms, for example. You make it very difficult for --
1137 because the advertising market becomes, potentially, much less

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1138 efficient.

1139 You make it much more difficult for new entrants and smaller
1140 firms to get the attention of the consumers that they're trying
1141 to reach.

1142 In fact, one of the things that I saw very recently after
1143 the effective date of the GDPR was an article in the Wall Street
1144 Journal that reported that they could already see that advertising
1145 was moving to the Google platform over in Europe and so that's
1146 something we are very conscious of and we want to be very careful
1147 about.

1148 And when Congress thinks about these things in legislation,
1149 this is something that my recommendation would be you think
1150 carefully about to strike the right balance.

1151 The Chairman. That -- and I know I am over -- but that's
1152 exactly the conundrum we are in is finding that right balance
1153 because you have just a couple of platforms that dominate in the
1154 online advertising world today.

1155 So you want that competition but you don't want to do
1156 something that actually enhances their dominance, if you will.
1157 So I appreciate that.

1158 And I yield back.

1159 Mr. Latta. Thank you very much. The gentleman yields back.

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1160 The chair now recognizes the gentleman from New Jersey, the
1161 ranking member of the full committee for five minutes.

1162 Mr. Pallone. Thank you, Mr. Chairman.

1163 Much of the FTC's consumer protection enforcement actions
1164 are brought under Section 5 of the FTC Act, which prohibits unfair
1165 and deceptive acts or practices, and the remedies available for
1166 these cases are limited.

1167 The FTC can only seek an injunction in conditions which most
1168 often come in consent decrees. It can seek civil penalties for
1169 first violations.

1170 And I know, Chairman Simons, you mentioned already today
1171 that you support giving the FTC authority to seek civil penalties
1172 for first violations when companies fail to maintain reasonable
1173 data security.

1174 How would that tool help the FTC's efforts to protect
1175 consumers from data breaches?

1176 Mr. Simons. Thank you, Congressman.

1177 So what that would do is that would enable us to impose a
1178 sufficient monetary penalty that would just -- that would
1179 incentivize companies to better protect data.

1180 As you -- as you have said and as other have said, if what
1181 is going on in terms of our enforcement authority is that we can

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1182 only get an injunction that just says, you know, sin no more,
1183 then that's much less of a deterrent than if we could get monetary
1184 penalties that would actually, you know, cause the business to
1185 think through how it's conducting -- how it's conducting its
1186 business and what it's doing in terms of security and privacy.

1187 Mr. Pallone. Now, I know that -- to clarify, when the FTC
1188 does have authority to seek civil penalties, it's still up to
1189 the FTC to decide whether to even ask for those penalties and
1190 how much those penalties should be, correct?

1191 Mr. Simons. I am sorry. Could you repeat that?

1192 Mr. Pallone. When the FTC does have authority to seek civil
1193 penalties, it's still up to the -- to you to decide whether to
1194 even ask for those penalties and how much those penalties should
1195 be, correct?

1196 Mr. Simons. Yes.

1197 Mr. Pallone. Okay. So do you think that civil penalty
1198 authority would be beneficial for FTC's privacy cases as well?

1199 Mr. Simons. That's something I think we should explore.

1200 I don't have a view on that yet. Maybe something will come out
1201 of the hearings that we are going to conduct in the fall that
1202 will inform our views.

1203 Mr. Pallone. I appreciate your having those hearings in

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1204 the fall, too. I think that's -- it's great that you're doing
1205 that.

1206 What about the other Section 5 violations? Would you
1207 support legislation giving the FTC civil penalty authority for
1208 other enforcement actions?

1209 Mr. Simons. So other enforcement actions, I think, are a
1210 little different in the sense -- like, fraud, for example. Even
1211 though we are going under our Section 5 authority that provides
1212 for injunctive relief, as part -- what's ancillary to injunctive
1213 relief is the ability to get restitution and disgorgement, and
1214 those can serve as significant deterrent effects.

1215 So with respect to fraud, that's something that where our
1216 existing authority probably is sufficient. But with data
1217 security and privacy, it just becomes very hard to prove the extent
1218 of damage to any specific --

1219 Mr. Pallone. I am thinking of, like, robocalls, which I
1220 know we discussed. Do you see that as different? Like if, you
1221 know --

1222 Mr. Simons. Well, we have a rule and so we can get civil
1223 penalties for violations of robocall -- the robocall, the
1224 marketing and sales --

1225 Mr. Pallone. Okay.

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1226 Mr. Chopra. Congressman, under our statute, we are able
1227 to ask a court for civil penalties in the case where there's a
1228 rule on the books or when there's a violation of an order,
1229 generally speaking.

1230 So when we do have a rule on the books, it is easier, even
1231 on the first defense, we are able to ask a court for civil penalty.
1232 That's one of the reasons why rulemaking also could increase
1233 deterrence as well.

1234 Mr. Pallone. All right.

1235 Well, now, let me just say one more thing. I wanted to ask
1236 you about the Uber settlement. FTC recently announced an
1237 expanded settlement with Uber, and while the FTC was in the process
1238 of negotiating a settlement with Uber, making deceptive privacy
1239 and data security claims, FTC learned that Uber failed to disclose
1240 another significant breach of the customers' data, which
1241 Commissioner Ohlhausen called strikingly similar.

1242 So just quickly -- I only got less than a minute -- Chairman
1243 Simons, the expanded settlement with Uber includes some
1244 additional requirements but does not include civil penalties.

1245 Why couldn't the FTC seek civil penalties related to the
1246 second data breach?

1247 Mr. Simons. We would have to show that that was a violation

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1248 of a preexisting order.

1249 Mr. Pallone. Okay.

1250 Mr. Simons. There was no preexisting order.

1251 Mr. Pallone. But FTC found that Uber twice committed
1252 misconduct but still couldn't impose fines? Maybe I will go back
1253 to Commissioner Chopra.

1254 Do you think this situation is sufficient to stop repeat
1255 offenders in the case of Uber?

1256 Mr. Chopra. Well, my understanding of the Uber resolution
1257 was that the order was modified based on conduct that was not
1258 a direct violation of the original order, and this is what I am
1259 talking about.

1260 Our limitations on obtaining civil penalties are when
1261 there's a rule violation or a violation of an order itself. So
1262 I, of course, and I think all of us want to make sure that FTC
1263 orders are followed and if they are not followed we will seek
1264 all appropriate relief we should.

1265 But the question you're raising about whether on a first
1266 offense there should be penalties, I think that in order to deter
1267 misconduct we need to consider when it's appropriate that even
1268 on a first offense the lack of penalties may not serve as adequate
1269 deterrence.

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1270 Mr. Pallone. All right. Thanks so much.

1271 Thank you, Mr. Chairman.

1272 Mr. Latta. Thank you. The gentleman's time has expired.

1273 The chair now recognizes the vice chairman of the
1274 subcommittee, the gentleman from Illinois, for five minutes.

1275 Mr. Kinzinger. Well, thank you, Chairman, for yielding and
1276 I thank you all for being here today and taking some time and
1277 everything you do for the country.

1278 Commissioner Ohlhausen, the commission's website states
1279 that the FTC protects consumers by stopping unfair, deceptive,
1280 or fraudulent practices in the marketplace.

1281 I want to ask you a rudimentary and kind of direct question.
1282 Do you think a private company should ever be compelled to provide
1283 inaccurate information to consumers that deceptive or could
1284 impact the marketplace?

1285 Ms. Ohlhausen. I would certainly be concerned about any
1286 company providing inaccurate information to consumers, whether
1287 they did it voluntarily or were required to do so.

1288 Mr. Kinzinger. Okay.

1289 Commissioner Ohlhausen, crypto currency scams have been
1290 fertile ground for scammers since the value of bitcoin and other
1291 tokens skyrocketed in value at the end of 2017, bringing with

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1292 it rising interest in raising capital for startups via initial
1293 coin offerings.

1294 Last Congress, I worked with Representative Cardenas to pass
1295 Resolution 835 through the House highlighting the importance of
1296 improving consumer access to financial technology tools.

1297 Besides the recent workshop on crypto currency scams, what
1298 more is the FTC doing to target things like deceptive investment
1299 opportunities and focussed mining operations?

1300 Ms. Ohlhausen. So we actually have brought two cases
1301 involving crypto currency to enforcement actions where there were
1302 deceptive representations to consumers and we also have a long
1303 history of bringing, at different times, enforcement actions
1304 against deceptive promises about precious metals.

1305 Mr. Kinzinger. And is that getting enough public attention,
1306 do you think, or should it get more and how?

1307 Ms. Ohlhausen. We are always happy to get more public
1308 attention and interested in ways to find that out.

1309 Mr. Kinzinger. Sometimes you have to compete for bandwidth
1310 in the media.

1311 The goal of the U.S. -- and I will ask each of you this
1312 question -- the goal of the EU-U.S. Privacy Shield is to protect
1313 personal data and enable the flow of transatlantic data.

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1314 Without this framework, companies on both sides of the
1315 Atlantic would face grave uncertainty and serious limitations
1316 on their ability to connect -- to conduct business overseas.

1317 So for each of you, yes or no -- do you pledge support for
1318 Privacy Shield and commitment to enforce the framework?

1319 Mr. Simons. Absolutely.

1320 Ms. Ohlhausen. Yes.

1321 Mr. Phillips. Absolutely.

1322 Mr. Chopra. Yes.

1323 Ms. Slaughter. Yes.

1324 Mr. Kinzinger. Good. It's easy.

1325 And Chairman Simons, the calendar years 2015 and 2017 and
1326 the first quarter of 2018 all broke records for merger and
1327 acquisition activity. In the first quarter of 2018, for
1328 instance, the merger activity increased 67 percent year over year.

1329
1330 Researchers found that economic concentration has increased
1331 in many or most economic sectors. At the same time, researchers
1332 have found that entrepreneurs are not starting new businesses
1333 at a rate sufficient to overcome business closings.

1334 Do you think that increase in concentration is cause for
1335 concern or evidence of declining competition in the U.S. economy?

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1336 Mr. Simons. Thank you, Congressman.

1337 So that is one of the -- one of the main focusses of the
1338 hearings that we are going to have in the fall. Precisely that
1339 concern is one of the things that we want to get testimony about
1340 and take comments on.

1341 Mr. Kinzinger. You will be in a better position, you think,
1342 to comment after all that?

1343 Mr. Simons. Yes. In other words, it's an important focus
1344 of the hearings because, based on what we see in terms of the
1345 economic literature and otherwise, there's enough out there to
1346 be concerned that those things are really problematic.

1347 Mr. Kinzinger. Do you see any yet -- do you see any
1348 correlation between rising concentration and declining rates of
1349 new firm formation?

1350 Mr. Simons. Not specifically. I mean, some of the -- some
1351 of the material that you're probably citing relates to broad
1352 industry categories.

1353 So, for example, you might have -- and the categories could
1354 be national. And so if you -- what you have in the marketplace
1355 is you have chains who are becoming more pervasive in displacing
1356 local companies.

1357 The local concentration might not be changing at all. But

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1358 the national concentration is, and for anti-trust purposes in
1359 those types of markets it would probably be the local
1360 concentration that you'd want to worry about.

1361 So there might be some other issues going on. But that's
1362 part of the -- our job or our intent is to kind of figure that
1363 out.

1364 Mr. Kinzinger. Thank you. And the last question for you
1365 -- two companies, Google and Apple, together dominate the market
1366 for mobile operating systems, accounting for 99 percent of the
1367 market for smartphones in the United States, and you have seen
1368 the news, I am sure, this morning that the EU is set to fine Google
1369 \$5 billion anti-trust for the way it bundles its apps on Android
1370 smartphones and tablets.

1371 The question is what, if any, competitive discipline exists
1372 in such a highly concentrated market?

1373 Mr. Simons. So there's the two of them so they compete
1374 pretty heavily against each other. So that's one -- that's one
1375 level of competition.

1376 But I have to agree with you, it's concentrated. So, you
1377 know, it's not -- it's not like commodities in the Midwest or
1378 whatever. It's, obviously, very fragmented. This is a
1379 concentrated industry and this is an industry, as I've said

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1380 before, you know, what we do in the anti-trust world is most of
1381 the problematic conduct occurs where firms are big and have market
1382 power and that's where we look. And so this is one of the places
1383 we would focus on.

1384 Mr. Kinzinger. Okay. Thank you. I yield back.

1385 Mr. Latta. Thank you very much. The gentleman's time has
1386 expired.

1387 And the chair now recognizes the gentleman from Vermont for
1388 five minutes.

1389 Mr. Welch. Thank you, Mr. Chairman.

1390 I've got five minutes and I -- so I want to go through this
1391 quickly.

1392 First, I want to say congratulations to each of you. You
1393 know, I've read all your resumes. Like, you people are, like,
1394 smart, and in addition to that, you have got a record of public
1395 service and it demonstrates you're not only smart but you actually
1396 want to use your talent for the public good, and I just want to
1397 say to you that I think serving on the FTC at this time is
1398 incredibly important.

1399 I think a lot of working Americans are being squeezed at
1400 one end because wages aren't going up and, at the other end,
1401 because what Mr. Kinzinger was talking about, incredible pricing

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1402 power as a result of anti-competitive practices, and that is so
1403 essential that you stand up for the American consumer.

1404 So you're 3-2. But I hope you're 5-0 in asserting the need
1405 to have a very strong FTC to help working Americans. So thank
1406 you.

1407 I want to talk about a couple of things. One, in April,
1408 a bipartisan group of my colleagues including on this subcommittee
1409 Congressman Jeff Duncan and I wrote to you about the technological
1410 changes taking place in mobile commerce.

1411 And we think it's important for the FTC and the Department
1412 of Justice to be vigilant to make sure that incumbent businesses
1413 with existing payment technologies don't use that market position
1414 to block innovations and developments by potential competitors.

1415 And I appreciate it very much the commission's response to
1416 our letter where you indicated that you'd look closely at the
1417 payment standard setting process and your assurance that the
1418 commission will take appropriate action against any act or
1419 practice in the mobile payments marketplace that violates any
1420 of these statutes that you enforce.

1421 And I would like to submit for the record if I could, Mr.
1422 Chairman, our letter -- these letters.

1423 I want to ask you, Chairman Simons, with our mutual goal

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1424 of detecting and remedying any practice that may harm competition
1425 and consumers, can you share what you have done to date on the
1426 issues we raised in our letter to protect competition and
1427 innovation and, quickly, if you can.

1428 Mr. Simons. Yes. Sure.

1429 So standard setting, which is what you're describing is a
1430 really important thing in our economy. It can be useful for great
1431 numbers of efficiencies. As you can tell, the payment system
1432 itself is very interoperable.

1433 There's a bunch of different players in it and they have
1434 to interoperate. It's all the banks, the credit card companies,
1435 and all the merchants, of course.

1436 And so it's really important that that function but it's
1437 also -- it's also possible that those types of organizations can
1438 be used for anti-competitive purposes and we have -- we've had
1439 cases involving anti-competitive activity in standard-setting
1440 bodies. And so we are focused on that.

1441 Mr. Welch. Thank you. Let me go on to my next question.

1442 And I was pleased to see just yesterday -- just yesterday
1443 that the FTC issued a statement to Health and Human Services in
1444 response to the HHS request for public comment on lowering drug
1445 prices and out-of-pocket costs, which laid out the commission's

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1446 concerns with pharma companies abusing the REMS program to prevent
1447 generic competition.

1448 The commission comments really captured the issue perfectly
1449 and I can read it. The REMS program can protect the public from
1450 pharma abuse but they can also be misused to disrupt competition
1451 and innovation, and you go on to say the FTC supports regulatory
1452 and legislative actions aimed at correcting the misuse of REMS
1453 programs.

1454 I believe that's exactly right and I want to thank you for
1455 that. Chairman Simons, as we continue to consider the FAST
1456 Generics Act and the CREATES Act, how can Congress deter the
1457 current abuses and delays by brand manufacturers, instead,
1458 motivate them to provide generics with access to samples in a
1459 timely way?

1460 Mr. Simons. So without giving a view on the precise
1461 specifications in the act and the legislation you're describing,
1462 we are very supportive of this issue.

1463 Mr. Welch. Okay. Let me interject because I just have a
1464 few seconds left.

1465 Mr. Simons. Okay. Sorry.

1466 Mr. Welch. But thank you, and I appreciated the FTC letter.

1467 Another issue that's come to my attention is that web

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1468 browsers are considering the changes to the user interface that
1469 consumers see on their screens.

1470 Specifically, in the coming months consumers who are already
1471 wrestling with how best to protect themselves will potentially
1472 be provided with less information about the security of the
1473 website they are using at any given time.

1474 We should be working together to provide consumers with that
1475 information. Is this potential change to consumers' web browsing
1476 experience something that the commission is aware of? That's
1477 the security label at the top.

1478 If so, I would ask the commission to keep consumers and this
1479 committee updated on the impact of that potential change. And
1480 I am out of time, so it ends up as a statement, not a question.

1481 But, again, Mr. Chairman, I want to thank you. I think this
1482 -- your institution, your agency, is so, so vital. I hope you
1483 find a way better than sometimes we find a way to work together
1484 to get to an outcome that will be durable and helpful to the
1485 American people.

1486 We thank you.

1487 Mr. Latta. Thank you very much. The gentleman's time has
1488 expired and the chair now recognizes the gentleman from Texas,
1489 the chairman of the Health Subcommittee of the full committee

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1490 for five minutes.

1491 Mr. Burgess. Thank you, Mr. Chairman, and I appreciate our
1492 commissioners being here. This is always a good day when we have
1493 all of our commissioners in front of the committee.

1494 Chairman Simons, you began your testimony stating that
1495 Section 5 is an imperfect tool and, granted it is. But it's the
1496 tool that we have.

1497 Still, after years of studying the LabMD case, and I realize
1498 that most of you were not even born when that case started, and
1499 I also understand that it's -- although there was a recent Eleventh
1500 Circuit decision, I am certain it's not settled yet. But here
1501 in the aftermath of that, the business had arguably had a good
1502 business plan and was competently run.

1503 But because of a breach that occurred in technology that
1504 was really poorly understood years ago, now this business is no
1505 more and the people that were involved have, obviously, suffered
1506 significant harm.

1507 And, really, my question is, is this a -- is this a learning
1508 process as we look back? And I know you can't talk about the
1509 specifics of the case because I do understand that it's still
1510 in litigation.

1511 But it's been a hard one as I've watched for the last 10,

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1512 15 years in Congress. I practiced medicine before then so I
1513 certainly understand that yes, you can have somebody in your front
1514 office do something on a computer that puts some data at risk.

1515

1516 But in the absence of harm, to do this much violence to the
1517 business plan and the business model seems a little bit over the
1518 top. I just wondered if you -- is this an ongoing process that
1519 you're learning about this imperfect tool?

1520 Mr. Simons. Sure. I mean, one of the things the FTC does
1521 is it does -- it has a good history of engaging in self-critical
1522 examination.

1523 So, you know, first of all, let me say that, of course, you
1524 know, we never intentionally tried to put legitimate businesses
1525 out of business.

1526 We try to get them to comply with the law and not drive them
1527 from the market. That's bad for competition, which is the other
1528 side of our mission. So we really don't want to do that.

1529 And then the other thing I will say is that we do engage
1530 in self-critical examination, even outside these public hearings.

1531 We do it internally, and so one of the things that we've got
1532 going on is a task force on how we do our orders, and so that's
1533 relevant to the LabMD decision.

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1534 Mr. Burgess. It's reassuring to know that. Again, history
1535 is history and what has happened has happened and none of us can
1536 undo that. But I am grateful to hear that.

1537 Let me -- let me ask a question on robocalls because man,
1538 they are a nuisance, and at our house we have three cell phones
1539 and they can all ring simultaneously with the same identifying
1540 number from a town called Mexia, Texas, which is a small little
1541 town between Waco and Dallas.

1542 I don't know if it really did originate from there, and
1543 they're all selling, well, there was a hailstorm in your community
1544 and we are in the neighborhood and we thought we'd come by and
1545 check your roof for you.

1546 But three simultaneous calls come at the exact same time.
1547 It just doesn't seem reasonable that that is -- that that's one
1548 person doing that. Is there -- is there a recourse for the
1549 consumer at this point?

1550 I know we've passed do not call laws. In this committee,
1551 we've passed anti-spoofing laws. Is there a recourse for the
1552 consumer? Should I have them call your 800 number? What is the
1553 next step?

1554 Mr. Simons. So one of the things -- I am sorry, was that
1555 directed to --

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1556 Mr. Burgess. Well, anyone can answer. Ms. Slaughter
1557 brought it up but, Chairman, you're welcome to answer as well.

1558 Mr. Simons. Well, I don't want to hog the attention. So
1559 if anyone else would like to answer please go ahead.

1560 Ms. Slaughter. Thank you for the question. I think we
1561 probably are all on the same page about this. So you could hear
1562 a similar answer from any of us. It is enormously frustrating
1563 for consumers.

1564 It is just endlessly frustrating, and I can't tell you,
1565 sitting here, whether that -- those three calls originated really
1566 from Texas or not.

1567 The challenge for us that I outlined a little bit in my
1568 testimony is that many of the people orchestrating these calls
1569 and orchestrating these schemes are overseas and hide behind
1570 spoofing technology.

1571 Mr. Burgess. So the next step for the consumer that gets
1572 these calls what should we tell them?

1573 Ms. Slaughter. So the best -- right now, the technological
1574 solutions that the FTC has helped push into the marketplace can
1575 be among the most helpful that identify calls as fake or robocalls
1576 when they come into your phone and block them.

1577 Chairman Walden talked about one such example. But I think

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1578 looking at larger scale solutions that can be implemented across
1579 network levels is an important thing.

1580 Mr. Burgess. And it's a longer discussion. I am going to
1581 submit some questions for the record. But the issue of
1582 consolidation in the health care industry and the -- when I was
1583 in practice back in the late '80s I worried that there was going
1584 to be a single payer health care system and it was going to be
1585 called Aetna.

1586 And now the corner drug store is buying Aetna. So it is
1587 a cause of some concern for those of us who sit on this committee.

1588
1589 We've had hearings on it. I will have some specific
1590 questions for you on that and I would appreciate your attention
1591 to that.

1592 Thank you.

1593 Mr. Latta. Thank you very much. The gentleman's time has
1594 expired, and the chair now recognizes the gentleman from
1595 Massachusetts for five minutes.

1596 Mr. Kennedy. Thank you, Chairman. I want to thank
1597 everybody for coming and testifying this morning, and helpful
1598 information has been provided and I appreciate all of your
1599 service.

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1600 I wanted to touch a little bit on some of the focus of a
1601 number of hearings that we've had on this committee over the course
1602 of the past year or so with regards to internet and internet
1603 companies.

1604 So following the revelations of Facebook's data sharing
1605 practices with third parties, specifically for third party app
1606 developers, which led to Facebook users ending or data ending
1607 up with Cambridge Analytica, there was a lot of discussion around
1608 the FTC's 2011 consent decree with Facebook.

1609 That consent decree was entered into following Facebook's
1610 earlier failure to notify its customers of its data sharing
1611 policies and the recent Cambridge Analytica issue appears very
1612 similar.

1613 Chairman, I am not going to ask you details. I imagine
1614 you're not going to get into the details of an investigation.

1615 But I believe you have confirmed that the FTC is investigating
1616 whether Facebook violated its consent decree. Is that right?

1617 Mr. Simons. Yes, that's correct.

1618 Mr. Kennedy. And so, sir, under the consent decree Facebook
1619 was required to get biennial independent audits certifying that
1620 it has in fact a privacy program in place that meets or exceeds
1621 their requirements of the FTC order and to ensure that the privacy

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1622 of consumers' information is protected.

1623 Given that requirement, it's a bit troubling to see that
1624 the FTC didn't discover the Cambridge Analytica issue earlier.
1625 So, again, I know you're not going to discuss the ongoing
1626 investigation.

1627 But this is a circumstance in which the FTC is investigating
1628 the acts of a company that is subject to a consent decree.

1629 Is the investigation limited to whether the consent decree
1630 was violated or with the FTC also consider whether there were
1631 new unfair deceptive practices?

1632 Mr. Simons. Thank you, Congressman.

1633 It's -- like you said, it is an ongoing investigation. We
1634 publically announced that. But we can't -- what we can't do is
1635 we can't discuss the particulars of the investigation itself.

1636 And so I am sorry, but I can't comment on that.

1637 Mr. Kennedy. Okay.

1638 Mr. Chopra. Congressman Kennedy, though, I just want to
1639 add, FTC orders typically do not preclude the agency from
1640 investigating conduct outside of those orders. So if you
1641 reviewed the wide swath of orders that we have entered into over
1642 the years, we typically do not handcuff ourself to the four
1643 quarters.

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1644 Mr. Kennedy. So just the four quarters of the scope of that.

1645 Thank you. I appreciate that, Commissioner.

1646 So to reiterate a couple of the points that were made earlier,
1647 if new unfair deceptive practices are in fact found, a repeat
1648 offender could then be subject to civil penalties for those
1649 violations. Is that correct?

1650 Mr. Simons. Yes.

1651 Mr. Kennedy. So thank you. I also want to understand
1652 whether the FTC takes into account public statements made by those
1653 companies. Commissioner, you might have just touched on this
1654 point.

1655 But Facebook has made public statements that it's
1656 investigating all third party apps to determine if there was in
1657 fact misuse of users' information.

1658 Contrary to that statement, though, it's also been reported
1659 that Facebook has not even been able to access data regarding
1660 Cambridge Analytica to understand what happened in that case
1661 because the company and the data are located abroad.

1662 Again, without getting into the details of the current
1663 investigation, I respect -- I respect that, Chairman. Do you
1664 consider those public statements as commitments made to
1665 consumers?

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1666 Mr. Simons. So let me just say without tying it to a specific
1667 case, we look at everything. We look at what they say in their
1668 public documents. We look at what they say in their advertising.
1669 We look at what they say on their website -- the whole range.

1670 So we would look at everything.

1671 Mr. Kennedy. Okay.

1672 Mr. Phillips. Congressman, if I -- please, I apologize for
1673 interrupting you.

1674 Mr. Kennedy. No.

1675 Mr. Phillips. One of the things that I talked about in my
1676 oral statement earlier was the importance of Congress
1677 reauthorizing and eliminating the sunset in the U.S. SAFE WEB
1678 Act.

1679 You mentioned access to data abroad without, again, speaking
1680 to the specific case. That is a very important tool. So we
1681 really do urge you all to consider that.

1682 Mr. Kennedy. I appreciate the insight, sir.

1683 Last bit, and I think one of my colleagues touched on this
1684 as well. Google has told the public that it would stop scanning
1685 personal emails. Of course, most consumers probably didn't know
1686 that that was happening.

1687 But now we hear that Google does allow third parties to scan

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1688 emails. Do you review those public statements for violations
1689 of either Section 5 generally or of a consent decree?

1690 Mr. Simons. Yes, we review everything. So, I mean, that's
1691 one of the ways we start investigations. We issue public
1692 announcements or public statements and we get complaints. So,
1693 you know, we consider everything.

1694 Mr. Kennedy. Okay. Chairman, thank you, and I thank all
1695 the commissioners for being here. Appreciate your testimony and
1696 I yield back.

1697 Mr. Latta. Thank you very much. The gentleman yields back
1698 and, as agreed upon, we are going to take a five-minute recess
1699 at this time and come back in at 10 til the hour.

1700 Thank you.

1701 [Recess.]

1702 Mr. Latta. I would like to reconvene the subcommittee to
1703 order, and at this time I would recognize the gentleman from New
1704 Jersey for five minutes.

1705 Mr. Lance. Thank you very much, and good morning to the
1706 distinguished panel.

1707 I champion the Consumer Review Fairness Act in 2016 to
1708 protect consumers ability to share their honest reviews and
1709 opinions about products, services, or conduct in various forms

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1710 including social media.

1711 There has been growth and influence of search and social
1712 media since the bill became law. Much has changed since the FTC
1713 closed its Google investigation in 2012, and I ask the panel,
1714 beginning with the chair, what is your view on how best to maintain
1715 competitive markets and better safeguard consumer reviews?

1716 Mr. Simons. So let me just say that that piece of
1717 legislation is terrific.

1718 Mr. Lance. This is being recorded.

1719 [Laughter.]

1720 Mr. Simons. Okay. I stick with that statement.

1721 So one of the key things as I've described a little bit
1722 earlier or alluded to in terms of competition is that you need
1723 good information.

1724 Good information allows consumers to make the best choices
1725 and the reviews are just terrific in that regard. They really
1726 help spur competition. So that's just -- that's terrific and
1727 we are very much looking to -- and have enforced under that
1728 statute.

1729 Mr. Lance. Thank you. Would others on the panel like to
1730 comment?

1731 Yes, of course.

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1732 Ms. Ohlhausen. Yes, thank you, Congressman.

1733 I think that legislation was also very beneficial, and I
1734 was at the commission when we brought the case against Roca Labs
1735 --

1736 Mr. Lance. Yes.

1737 Ms. Ohlhausen. -- saying that that was a violation. But
1738 I also want to mention in addition to making sure that consumers
1739 are free to express their opinions, we want to be sure that when
1740 opinions are expressed what they're paid for by a sponsor that
1741 that's clear to consumers, too.

1742 So the FTC has engaged in a lot of enforcement and consumer
1743 ed and business warning letters to make sure that reviews, if
1744 they're sponsored, are labelled as such.

1745 Mr. Lance. And is that a more recent addition to this whole
1746 issue, the fact that you have required there be a disclaimer or
1747 whatever the appropriate word would be for the fact that some
1748 are being paid?

1749 Ms. Ohlhausen. So it's not -- it's not recent but it is
1750 -- we've given additional guidance for the new, you know, on
1751 Twitter or online to make sure that the old rules that have always
1752 applied that people understand how they apply in the new economy
1753 as well.

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1754 Mr. Lance. Thank you very much, Commissioner.

1755 Other comments? Yes, Commissioner.

1756 Mr. Phillips. Just briefly. I just want to associate
1757 myself with the comments of my colleagues and thank you for your
1758 work on that really important legislation.

1759 Mr. Lance. Thank you. It's based upon the fact that there
1760 was a review of I think an orchestra at a wedding and there was
1761 some discussion that those who might purchase that service had
1762 to sign a form saying that there could be no disparaging review
1763 online which, of course, I think appals the American consuming
1764 public.

1765 Mr. Chopra. I agree, and I also want to share that one useful
1766 provision of that bill as well as some other bills that have been
1767 passed on a bipartisan basis is also allowing our state attorneys
1768 general to enforce it as well.

1769 We don't have the resources to do everything. But sometimes
1770 we won't be able to catch every orchestra violation. But the
1771 more we can rely on our state partners, the better.

1772 Mr. Lance. Thank you.

1773 Without commenting on any particular company or
1774 investigation, if a company is operating under a consent order
1775 and found in violation of the agency's data security or privacy

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1776 rules, does that affect the assessment of fines and penalties?

1777 Whoever would like to begin.

1778 Mr. Chopra. So, typically, violations of orders allow the
1779 FTC to seek from a court injunctions equitable relief, which can
1780 include consumer refunds as well as substantial civil penalties
1781 over 40,000 per violation.

1782 So we have the discretion in many ways of when to seek it
1783 and how much to seek. But enforcement of our orders has to be
1784 a top priority.

1785 Mr. Lance. Thank you. I ask these questions as the FTC
1786 continues its investigation into Facebook. During my questioning
1787 at this committee's hearing with Facebook CEO Mark Zuckerberg
1788 on April 11th, I indicated that Facebook's actions leading up
1789 to the Cambridge Analytica hack may have violated the consent
1790 agreement Facebook struck with the FTC in 2011.

1791 News reports since that hearing have highlighted other
1792 questionable practices at Facebook. This has strengthened my
1793 belief that the company has routinely violated its promise to
1794 obtain express consent from consumers before sharing information
1795 with third parties.

1796 I realize you can not comment on that as members of the
1797 commission. But that is my considered view, having reviewed the

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1798 matter.

1799 Thank you, Mr. Chairman. I yield back.

1800 Mr. Latta. Thank you. The gentleman yields back.

1801 The chair now recognizes the gentlelady from California for
1802 five minutes.

1803 Ms. Matsui. Thank you very much, Mr. Chairman.

1804 Last week in the Telecom Subcommittee, we discussed the
1805 difference frameworks governing consumer privacy. Current
1806 privacy rules for the telecommunications providers, for instance,
1807 require opt in consent from consumers before their provider could
1808 share so-called CPNI with unrelated third parties for independent
1809 use.

1810 More broadly, however, it is often the case that an unrelated
1811 third party to an online platform can and does receive data on
1812 a consumer that visits that platform.

1813 Third party analytics tools on a given website which send
1814 information on a user's visit to a third party and allows that
1815 third party to assess user data.

1816 So I believe that a necessary part of the data privacy
1817 discussion -- maybe the most important part -- could be addressing
1818 access to data by a third party with whom a consumer has no direct
1819 relationship or knowledge.

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1820 Mr. Chopra, what role does addressing independent third
1821 party data use have in the FTC's consumer protection mission?

1822 Mr. Chopra. Well, under our current authority, if that is
1823 disclosed, we may be frustrated in being able to combat that.

1824 But with respect to any privacy legislation that offers us the
1825 -- offers consumers affirmative rights to know where data is being
1826 shared, to know what it's being used for, and for consumers to
1827 be able to access that, if we were able to implement that and
1828 some of these principles come from our work from nearly 20 years
1829 ago in 1999, I think that would be very effective for the
1830 marketplace.

1831 Ms. Matsui. So you're basically saying you need
1832 legislation.

1833 Mr. Chopra. We are doing what we can --

1834 Ms. Matsui. Right.

1835 Mr. Chopra. -- with what we have. But we can't solve all
1836 of these problems with the existing law we have. This is why
1837 I really think we need more tools and resources to --

1838 Ms. Matsui. So we have to be very specific, though, in our
1839 legislation to direct you then. Is that correct?

1840 Mr. Chopra. Well, you can -- I am not going to -- many people
1841 know how to craft legislation better than me.

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1842 But the extent to which you can provide the framework in
1843 which we can implement through rulemaking, that will allow us
1844 to be flexible as how the market changes.

1845 No one would have known the extent to which website trackers
1846 would be used 10 years ago.

1847 Ms. Matsui. Right. Okay.

1848 Any other comments?

1849 Okay. As you all know, regular HTTP connections sent in
1850 plain text can be intercepted and exploited by anybody or anything
1851 between a user and the website including somebody using public
1852 wifi.

1853 So I am pleased that HTTPS deployment continues to grow.
1854 HTTPS protocol can ensure an online connection between a consumer
1855 and a website that's encrypted.

1856 And I am interested that the commission is looking at whether
1857 the same standard UI security indicators could be helpful in
1858 providing consistent meaningful consumer information no matter
1859 which browser you're using and whether you are using a desktop
1860 or mobile device.

1861 Common security indicators that are deployed consistently
1862 could be a step towards increasing consumer understanding as to
1863 when their connection to a website is not only secure but also

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1864 safe.

1865 Entire panel -- does anybody have any thoughts on how
1866 security indicators deployed by web browsers could promote
1867 consumer protection?

1868 Mr. Chopra. Well, I think the advancements in how we are
1869 securing website traffic are a positive step in the marketplace.

1870

1871 We know from other sectors of the economy, particularly in
1872 financial services, that encryption and higher standards for
1873 website security continue to be far ahead of the rest of the
1874 digital economy.

1875 I don't necessarily know what we can do from a law enforcement
1876 perspective. But, obviously, companies that are maintaining
1877 sensitive data, financial health or whatever it may be, need to
1878 take steps to secure that data.

1879 Ms. Matsui. Any other -- the rest of the panel any comments?

1880 Ms. Ohlhausen. I think it's important that we look at how
1881 consumers get information about the security of the entire chain.

1882

1883 So the FTC has brought enforcement actions against browsers
1884 that weren't secure against -- that was the ASUS case -- against
1885 computers that had inadvertently or they didn't understand that

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1886 it was really providing a man in the middle attack for adware
1887 in the Lenovo case. So I think we've paid attention to all links
1888 in the chain for consumers.

1889 Ms. Matsui. And I think the consumer needs to know and
1890 that's the part of it that we like to look at and I hope you're
1891 looking at too, because they may -- they don't know, in essence,
1892 and that's what's causing a lot of problems today, because they
1893 are unaware of what's protected, what's secure, what's not.

1894 So anyway, it looks like I've run out of time. I yield back
1895 my time. Thank you.

1896 Mr. Latta. Thank you very much. The gentlelady yields
1897 back.

1898 The chair now recognizes the gentleman from Kentucky for
1899 five minutes.

1900 Mr. Guthrie. Thank you, Mr. Chairman. Thank you for
1901 holding this meeting and thank you call for being here.

1902 This first one is for Commissioner Ohlhausen. Last
1903 Congress, I introduced -- it was H.R. 5315, which is the CLEAR
1904 Act, which we had a series -- part of a series of bills that we
1905 put forward on commission process reform.

1906 And I think it was almost a year ago that the commission
1907 announced itself that it was going to look at -- announced a set

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1908 of reforms for consumer protection investigations, and it was
1909 reportedly looking into reforms for competitive investigations
1910 as well.

1911 Has there been progress made?

1912 Ms. Ohlhausen. So yes, there has been progress that's been
1913 made. So we had our civil investigative demands reforms that
1914 I talked about at the beginning of my testimony that tried to
1915 give recipients clearer information and better guidance.

1916 We also reduced the time for civil investigative demand.
1917 I gave a little more time to respond. We've gone through, under
1918 my leadership and we closed a number of investigations, but one
1919 of the other things that we did is we went through and looked
1920 at all our data security investigations, the ones that -- and
1921 privacy, the ones that we closed, and we distilled from that
1922 lessons about what steps companies had taken where we found it
1923 gave reasonable security and we issued that in an updated guidance
1924 called Stick with Security. It gave us 10 additional lessons
1925 to supplement or start with security for sure.

1926 Mr. Guthrie. Okay. Well, thank you.

1927 And Mr. Chairman, do you have any comments on the issues
1928 the committee should be considering in just terms of process
1929 reform as well?

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1930 Mr. Simons. -- process, also on the competition side. So
1931 one of the things that's been reported publicly is that the merger
1932 investigation seems to have gotten longer, at least according
1933 to some measures.

1934 So one of the things we are looking at is actually tracking
1935 -- developing a tracking mechanism to see how long they are in
1936 fact taking and why they are taking as long as they are and then
1937 allow us to determine what we can do to make them more efficient
1938 and less burdensome.

1939 Mr. Guthrie. Thank you very much. And I am going to shift
1940 gears to the chairman as well. I know that we have -- particularly
1941 with older folks we've advertised and talked -- I mean, our office
1942 to try to put out when somebody calls you never give your -- any
1943 information over the phone. Hey, we are your bank -- we need
1944 to fix your account or whatever -- we do that.

1945 But the concern that I have is these fake websites. When
1946 you go online and you're seeking it -- the information and you're
1947 trying to engage with a hotel chain or to get a reservation or
1948 whatever and you got to give information to confirm a rental car
1949 -- any of that -- any consumer, actually, retail business.

1950 So just interested in how we know the identity of a website.
1951 One, is there -- the committee -- I know the committee is looking

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1952 at how websites or identities confirmed, and the question is what
1953 tools can consumers use to confirm they're on a real website where
1954 they intended to go instead of a phishing site?

1955 It is the green -- I think it's the green lock -- padlock
1956 that should be next to the site. Is that secure? Is that something
1957 we should look for? I mean if you all, anybody that's in that
1958 area to look for that -- talk about that? Is there any -- talking
1959 about secure websites under that?

1960 Okay. I guess that's not, unfortunately --

1961 Mr. Phillips. Congressman, if I may just very briefly --
1962 you had asked about other process reforms. I think I would be
1963 remiss not to bring up the Sunshine Act. While that law has a
1964 really great name, the way it operates today it inhibits our
1965 ability as a commission to talk to each other.

1966 And so I just forward that for your consideration.

1967 Mr. Guthrie. How is that detrimental?

1968 Mr. Phillips. Well --

1969 Mr. Guthrie. I mean, I am just -- I am not challenging.

1970 I am asking to --

1971 Mr. Phillips. Sure. So --

1972 Mr. Guthrie. An example you would like to talk with each
1973 other and --

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1974 Mr. Phillips. If three of us want to talk together about
1975 an important issue or four of us want to talk together, unless
1976 we -- you know, of commission business -- unless we publicly notice
1977 it in advance we can't meet and while there are some really
1978 important meetings that take place that are noticed, the daily
1979 back and forth can also be important.

1980 Mr. Simons. The informal -- the ability to informally meet
1981 without having to in advance schedule a full commission meeting
1982 would be enormously helpful.

1983 Mr. Guthrie. Okay. So --

1984 Mr. Simons. It allows us to kind of work through issues
1985 much more quickly and without delay as opposed to actually
1986 scheduling a formal meeting.

1987 Mr. Guthrie. So the idea if you were going to take any action
1988 that it would be noticed and -- but you can't even --

1989 Mr. Simons. We'd have to vote. We'd have to vote.

1990 Mr. Guthrie. Okay. Any action would report, I see that.

1991 Mr. Phillips. Typically, we are talking about informal
1992 conversation -- take any legal action. Yes, of course.

1993 Mr. Guthrie. Yes. You can't -- I've seen city commissions
1994 in a room or something. They say, oh, we got one commissioner
1995 needs to step out and talk about something.

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1996 Mr. Phillips. It happens.

1997 Mr. Guthrie. And that's what, so there only can be two
1998 instead of three when I am doing -- talking to them about different
1999 business I've seen that before, and they literally do that.

2000 They don't take advantage. They send somebody out of the
2001 room and say they don't have the quorum or moving forward. But
2002 it does seem like him and I just talk about what issues are
2003 important to the city. It's not an action that's being taking
2004 and moving forward. I see your point to that.

2005 I yield back.

2006 Mr. Latta. Thank you very much.

2007 The gentleman yields back the balance of his time.

2008 And the chair now recognizes the gentlelady from New York
2009 for five minutes.

2010 Ms. Clarke. Thank you, Chairman Latta and Ranking Member
2011 Schakowsky, for convening this morning's hearing.

2012 A pleasant good morning to all of our commissioners and a
2013 special welcome to our newest FTC commissioners. Your role is
2014 more important now than it has ever been before.

2015 The American people count on you to protect their data,
2016 privacy, promote competition, and much more. There are so many
2017 pressing issues and changes happening under the FTC's authority

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2018 daily.

2019 I can say that I've very anxious to hear your answers
2020 regarding these issues and the significant changes. I would like
2021 to start with the issue of privacy, and direct this question to
2022 Commissioner Chopra.

2023 When it comes to privacy, there are many changes that need
2024 to be made to protect American consumers. Over the past years,
2025 discrimination online has been rapid, resulting in the
2026 marginalization of struggling families and communities.

2027 So can you please talk about the impact that the lack of
2028 meaningful privacy protections has on consumers, particularly
2029 those in under served and low income communities?

2030 Mr. Chopra. Yes. So 50 years ago, Congress had a debate
2031 about secret databases that were making decisions about our lives
2032 -- about where we could live, about where we could work, and about
2033 what loans we could take.

2034 We passed the Fair Credit Reporting Act in 1970 to advance
2035 new levels of transparency, to give consumers redress when there
2036 are mistakes.

2037 In today's digital economy, decisions are increasingly being
2038 made through data sets that we could have never imagines. It's
2039 no longer a manila folder world. It's a digital world.

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2040 And in many cases, it's very hard for us to look at what
2041 was the data that was being used. With machine learning and
2042 algorithms that are constantly changing, it's hard to audit and
2043 hard to see when maybe those mechanisms are reinforcing biases
2044 rather than leading to more inclusion.

2045 The FTC has done work on big data and inclusion issues and
2046 I am concerned that our existing laws to prevent discrimination
2047 can't really be easily used when it comes to how technological
2048 choices -- how technology is affecting the choices of firms in
2049 our economy, particularly with employment, housing, and credit.

2050 Ms. Clarke. So what can the FTC do to make sure that these
2051 consumers are protected and do you feel that the FTC has the
2052 resources, expertise, and authority necessary to protect these
2053 consumers?

2054 Mr. Chopra. Well, we do have -- we have the Fair Credit
2055 Reporting Act. We have the Equal Credit Opportunity Act. We
2056 have not brought a case in a long time in the Equal Credit
2057 Opportunity Act. That would like us -- I would like us to
2058 energetically enforce those two laws.

2059 But, truthfully, on the second part of your question, my
2060 answer would be no, I don't think we have the resources and
2061 authority to confront some of the issues you're raising,

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102

2062 particularly with respect to privacy and data security.

2063 Ms. Clarke. Okay. Well, I think that, Mr. Chairman, this
2064 is something we need to take a look at because it's only something
2065 that will become more insidious over time.

2066 Net neutrality and the FTC's authority is an issue that I
2067 believe is on everyone's mind. So let me just extend this to
2068 the panel.

2069 Would you state or believe that the recent Supreme Court
2070 decision in Ohio v. American Express has affected the FTC's
2071 ability to police anti-competitive behavior and net neutrality
2072 violations by broadband providers?

2073 Mr. Simons. I will answer first. I don't think so.

2074 I think the Am Ex case is extremely narrow. I think, really,
2075 the basic crux of it is limited to situations where there's a
2076 multi-sided platform that effectively involves a transaction
2077 where the platform is providing a service to both sides at the
2078 same time in the same way, basically.

2079 So I think, generally, that's going to apply to very few
2080 situations.

2081 Ms. Clarke. -- that it serves a two-sided market -- edge
2082 providers or interconnecting parties on one side and consumers
2083 on the other.

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2084 Does the American Express decision potentially preclude
2085 effective FTC enforcement against anti-competitive conduct
2086 against edge providers?

2087 Mr. Simons. It might depend on the very specific facts.
2088 But, in general, I would think not.

2089 Ms. Clarke. Very well.

2090 Former FTC Commissioner Terrell McSweeney has suggested
2091 creating a bureau of technology at the FTC. Does the commission
2092 have sufficient resources and staffing to protect consumer
2093 privacy in the digital age and were resources an issue in failing
2094 to enforce the 2011 consent order?

2095 Mr. Simons. We can't talk about the -- an existing
2096 investigation. But we can say that -- so we have numerous ways
2097 of getting the technology help that we need. So we have an office
2098 of technology research and investigation which has, I think, about
2099 eight technologists in it. We frequently contract with outside
2100 parties to get technology resources and we hold -- we hold
2101 workshops and seminars where we bring people in to educate us
2102 about new developments in the technological area.

2103 Ms. Clarke. Very well. Mr. Chair --

2104 Ms. Slaughter. Can I jump in, Congresswoman?

2105 I do think -- I would lend my personal support to the idea

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2106 of a bureau of technology. I think it is the kind of thing we
2107 could really benefit from and I am concerned that with our current
2108 resource constraints to set something like that up we would have
2109 to be taking resources away from other important work that we
2110 are doing.

2111 So it is an area where I think we could really benefit from
2112 some injection of more resources.

2113 Mr. Simons. We are looking into that. So we actually are
2114 affirmatively evaluating whether to create a bureau of technology
2115 and that's just in process So I am not sure how that's going
2116 to come out.

2117 There's a group of technologists that are embedded in the
2118 Bureau of Consumer Protection and so they're already there. And
2119 so the question is whether we need to have a commission wide bureau
2120 as opposed to one that's just in one of the bureaus.

2121 Ms. Clarke. And whether, in fact, the workload is --

2122 Mr. Simons. And yes, that's -- - yes.

2123 Ms. Clarke. -- would be a burden to those who are already
2124 in that space.

2125 Mr. Chairman, I yield back.

2126 Mr. Latta. Thank you very much.

2127 The gentlelady's time has expired.

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2128 The chair now recognizes the gentleman from Indiana for five
2129 minutes.

2130 Mr. Bucshon. Thank you very much, Mr. Chairman.

2131 As a physician, I am concerned to hear reports that the DOJ
2132 may not challenge the CVS-Aetna merger. In an industry -- the
2133 health care industry that already lacks price transparency and,
2134 in many areas, competition, this vertical merger could increase
2135 anti-competitive practices.

2136 I am not passing any judgements on the merger at all, up
2137 or down. I am just voicing a few concerns and then I have a few
2138 questions.

2139 The merger could potentially lead to Aetna customers
2140 receiving some pressure to fill prescriptions at CVS and to visit
2141 CVS walk-in clinics instead of other pharmacies or clinics,
2142 eliminating real choice for the consumer.

2143 In addition, Caremark, owned by CVS, is one of the largest
2144 PBMs -- pharmacy benefit managers -- in the country, and as you
2145 likely know, ensures our PBMs to negotiate prices from drug
2146 manufacturers.

2147 The top three PBMs manage the drug benefits for approximately
2148 95 percent of the American people. The merger might incentivize
2149 Caremark to secure better deals from Aetna while potentially

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2150 increasing costs for other companies.

2151 While I understand that the DOJ is currently investigation
2152 the merger, I want to get your perspective not particularly on
2153 this merger. I am getting to my point here. I want to get your
2154 perspective since the FTC also has jurisdiction enforcing federal
2155 anti-trust laws.

2156 So to the panel, what are your thoughts on this type of
2157 vertical merger in the health care industry, again, not specific
2158 to this but in general, in the health care industry and other
2159 industries.

2160 Particularly in health care, I am very concerned about this
2161 because, as you know, as a country, we are struggling to get health
2162 care costs down and provide coverage for all of our citizens.

2163 So I guess I will just address this to the panel. What are
2164 your thoughts about this type of merger in the health care space?

2165 Mr. Simons. So let me say first, that the health care
2166 industry has been and will continue to be an enormous emphasis
2167 for the FTC for all the reasons that you just described.

2168 In terms -- so we are very focused on this part of the economy
2169 and we are very much looking out for the consumer here.

2170 So and in terms of the vertical mergers, they turn out to
2171 be very, very fact specific. So sometimes they can be -- they

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2172 can be efficiency enhancing and beneficial for the consumer, even
2173 maybe when the companies involved are relatively large.

2174 But sometimes they can be very harmful to the consumer.

2175 And so, you know, the job of the anti-trust authority is to
2176 determine, you know, which is which and act accordingly.

2177 Ms. Ohlhausen. I agree that healthcare is enormously
2178 important to consumers and it's an enormously important part of
2179 our economy and thus an enormously important and focus at the
2180 FTC and health care enforcement in general.

2181 Regarding vertical mergers, I agree with Chairman Simons
2182 they are intensely fact specific. But I would mention that's
2183 outside the healthcare space. But we recently just had a vertical
2184 merger where we had a remedy we required -- a behavioral remedy
2185 in the Northrop-Orbital ATK matter.

2186 So there can be problems in vertical mergers and where there
2187 are problems the mergers should be stopped or maybe a remedy should
2188 be proposed that takes care of that problem and allows the
2189 efficiencies to occur.

2190 Mr. Phillips. Thank you for the question, Congressman.
2191 I agree with my colleagues that healthcare is -- has been for
2192 a very long time and will remain a focus for this agency -- I
2193 am very proud of the work that our staff have done in fighting

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2194 all sorts of anti-competitive conduct in the health care space
2195 in ensuring that mergers work for consumers.

2196 Experience and economic learning teach us that verticals
2197 can be very good for consumers. But the specifics depend on the
2198 facts, and that makes it really important that we, as law
2199 enforcers, pay attention to trends, in that sector of our economy.

2200 Look at how companies are changing their behavior, look at how
2201 they're combining and stay on top of them when we fear that there
2202 may be anti-competitive effects.

2203 Mr. Chopra. I think the structure of the pharmacy benefit
2204 manager business raises very serious transparency and conflict
2205 of interest issues.

2206 Ms. Slaughter. My colleagues have said basically
2207 everything I was going to say. I was going to add a point that
2208 I think in health care in particular consumers are frequently
2209 frustrated and competition is frustrated by a lack of
2210 transparency, as Commissioner Chopra mentioned, and it's
2211 particularly true with respect to pharmaceutical benefits.

2212 Mr. Bucshon. Quickly, Commissioner Phillips, this
2213 committee is very focused on ways in which companies and devices
2214 collect information about consumers.

2215 As I've raised in several hearings, I have specific concerns

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2216 with cell phones and other smart devices listening and collecting
2217 information and then that information being used to deliver
2218 targeted ads, and this happens to all of us all the time.

2219 Is this something you're concerned with -- and I know you
2220 are -- that -- and will it be an issue that the FTC makes a priority?

2221 Mr. Phillips. I think it's one of those economic trends
2222 that I mentioned a moment ago outside the healthcare space that
2223 very much is at the front of what we are looking.

2224 Mr. Bucshon. Okay. Thank you very much. I yield back.

2225 Mr. Latta. Thank you. The gentleman's time has expired.

2226 The chair now recognizes the gentleman from Texas for five
2227 minutes.

2228 Mr. Green. Thank you, Mr. Chairman. I thank you for
2229 holding this hearing, also for our ranking member.

2230 I would like to talk a bit about our robocall problem and
2231 consumer fraud. As you know, robocalls and failure of the do
2232 not call registry are some of the top complaints received by the
2233 FTC and by members of Congress and our constituents, particularly
2234 older Americans.

2235 Older Americans lose more than -- more money to fraud than
2236 younger age groups. According to the FTC's Consumer Sentinel
2237 Network Data Book, Americans ages 50 and older are reporting a

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2238 median loss of \$1,092 over two and a half times the median loss
2239 for Americans in their 30s for only \$380.

2240 Chairman Simons, out of all the complaints received by the
2241 FTC on these calls and can you provide a rough estimate on how
2242 many come from U.S. companies or individuals and how many come
2243 from overseas?

2244 Mr. Simons. Thank you for the question.

2245 We are very interested in that. But, unfortunately, the
2246 data that we have access to doesn't allow us to determine that.

2247 If I had to guess, I would say it's probably, largely, coming
2248 from overseas.

2249 Mr. Green. Well, I've heard that the hearing to date --
2250 she said that she got a robocall and somebody was speaking to
2251 Chinese to her. I don't know how that would do any good to try
2252 to call us in Texas. But --

2253 Mr. Simons. You know, that's one of the problems really
2254 is that the do not call rule has been superseded by technology
2255 -- right, technological developments.

2256 You can have -- you can have the telecommunications costs
2257 have come down so dramatically and the computing costs have come
2258 down so dramatically that blasting out millions and millions of
2259 calls is so cheap.

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2260 Mr. Green. Do you know how many defrauded older Americans
2261 receive consumer redress from the FTC?

2262 If you don't know, if you'd just get it to us, because I
2263 would like to -- because a lot of us do senior townhall meetings
2264 and they want to know about Social Security and Medicare and then
2265 they say we are tired of robocalls.

2266 Mr. Simons. We are all tired of robocalls and actually one
2267 of the things we think would be really helpful in that regard
2268 is to give us jurisdiction over common carriers because some of
2269 them are, we think, are facilitating robocalls and we could --
2270 we could challenge that.

2271 Mr. Green. I've understood that and I don't have any
2272 opposition to it. But I know when we get the FTC and the FCC
2273 it's -- somehow in our committee had jurisdiction over both of
2274 them. So you're talking to the right committee.

2275 What more could the FTC do under current law to protect older
2276 Americans from fraud?

2277 Mr. Simons. We do a lot. So we have enforcement actions.
2278 We have outreach -- community outreach. We have website -- on
2279 our website we have consumer materials for the elderly and we
2280 do sweeps.

2281 We recently conducted a sweep that dealt with the elderly.

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2282 Or actually, there's a task force now that the DOJ is spearheading
2283 that we are involved with. That is one of the communities that's
2284 geared to help is elderly.

2285 Mr. Green. Is there a way that -- could the FTC partner
2286 with the FCC on a joint effort, particularly for seniors and older
2287 Americans?

2288 Mr. Simons. We would -- that would certainly -- certainly
2289 be happy to talk to Chairman Pai about that.

2290 Mr. Green. I will bring that up at our telecom subcommittee.
2291 I think that's -- elder abuse is an issue and that's a big
2292 one I know we all hear about. Mr. Chairman, I will yield back
2293 the balance of my time.

2294 Mr. Latta. Thank you very much. The gentleman yields back.
2295 The chair now recognizes the gentleman from Pennsylvania
2296 for five minutes.

2297 Mr. Costello. Thank you. In May, the FTC and the FDA send
2298 13 warning letter to retailers, manufacturers, and distributors
2299 of vaping nicotine products to stop marketing these products to
2300 children. As we have recently seen, vaping -- some people call
2301 it jewelling -- is increasingly become pervasive in our schools.

2302 As FDA Commissioner Gottlieb announced in April, it is well
2303 established that nicotine can, quote, "rewire an adolescent's

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2304 brain, leading years of addiction," end quote.

2305 Two questions, Mr. Chairman, and if anyone else would else
2306 would like to weigh in -- does the FTC agree with Chairman
2307 Gottlieb's statement that there is no acceptable number of
2308 children using tobacco products -- I guess that's an easy answer
2309 --

2310 Ms. Slaughter. Yes.

2311 Mr. Costello. -- followed by this question. Would it be
2312 a powerful deterrent to give the FTC the authority to find a party
2313 marketing these vaping products to children for their first
2314 violation?

2315 Mr. Simons. I would think any financial penalty would be
2316 more of a deterrent than no financial penalty.

2317 Mr. Costello. This would -- comes on the heels, I think,
2318 of Commissioner Chopra's comment about the difference between
2319 having the ability to find versus working on a --

2320 Mr. Simons. Correct.

2321 Mr. Chopra. If there was a rule in place or if we had that
2322 authority, we would certainly be able not only to just tell someone
2323 stop; we would be able to seek penalties and other remedies to
2324 --

2325 Mr. Costello. What would that rule look like and how could

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2326 Congress carefully tailor that so that you don't have all the
2327 freedom that we fear you could have?

2328 Mr. Chopra. Yes. Well, I think actually some of the
2329 comments Commissioner Gottlieb has made on this I think that would
2330 really inform how you might prescribe it because there is some
2331 changing science.

2332 There is some changing delivery mechanisms of nicotine.
2333 We, obviously, are not -- maybe someone is but I am not an expert
2334 in the tobacco market.

2335 But I think you would be able to put the guardrails around
2336 it to make it as narrow or as wide as you want. I just want to
2337 make sure that whatever you do give us we vigorously enforce.

2338 Mr. Costello. Yes. I mean, the broader application of that
2339 example is, from a marketing perspective, how do you fashion how
2340 you would go about determining what is and isn't a violation and
2341 just how broadly would that power be vested upon you to go into
2342 the marketing space and say we are going to slap you here -- we
2343 are going to fine you here versus we are going to enter into a
2344 consent decree there.

2345 And is it so broad as to say any marketing or is it going
2346 to be sort of certain types of marketing or certain products?

2347 Mr. Chopra. Right. So actually we do --

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2348 Mr. Costello. Because I gave you the easy example.

2349 Mr. Chopra. We do enforce a children's online privacy
2350 protection act and there's implementing regulations, and as part
2351 of that we help to communicate to the marketplace what is
2352 considered dealing with online transactions with children. We
2353 specify that.

2354 So one of the advantages of putting some meat on the bones
2355 through implementing rules is that it gives all market
2356 participants a clear sense as to what is inside and outside the
2357 bounds rather than just waiting for enforcement action.

2358 Mr. Costello. Right. I have another question for you.
2359 I will ask that and if you want to follow up on this one.

2360 The Smart IoT Act was approved by the full committee. We
2361 were focused on both the benefits and challenges of what a
2362 connected world brings.

2363 Can you talk about the actions and initiatives the FTC has
2364 or will take to promote consumer protection with respect to IoT
2365 devices?

2366 Mr. Simons. Yes. So we are active in that space, as
2367 Commissioner Ohlhausen mentioned. We've had a couple of orders
2368 there already and we continue to look at that.

2369 We've also had an IoT workshop and so to educate ourselves

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2370 and to look at what we should be doing, going forward.

2371 So we are very active in this area.

2372 Mr. Costello. Ms. Ohlhausen, you also mentioned that in
2373 your opening testimony. Anything to add to that in terms of what
2374 you're doing in the IoT space?

2375 Ms. Ohlhausen. I think it's a particularly interesting area
2376 and, certainly, our enforcement actions against the first
2377 connected toy case in VTech, other ones that we brought about
2378 -- internet connected cameras and the routers as well as the policy
2379 inquiries, because Internet of Things has -- can have enormous
2380 benefits for consumers and for competition.

2381 So we want to draw the lines in the right place to make sure
2382 consumers are protected but that innovation can still continue
2383 in the market.

2384 Mr. Costello. Do you have the type of authority vested in
2385 you to be able to do that or have you found that lacking in your
2386 diligence?

2387 Ms. Ohlhausen. I think for the Internet of Things, you know,
2388 the cases we've been able to bring I think do show that we do
2389 have, you know, sufficient authority there to -- teeth and got
2390 the attention of the industry about, you know, making sure that
2391 they don't have flaws and that they are looking at things.

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117

2392 But it is a challenging area because they are often
2393 disposable products they don't necessarily get updated a lot.
2394 So there may be --

2395 Mr. Costello. Layered with other products?

2396 Ms. Ohlhausen. -- industry involvement as well.

2397 Mr. Costello. I appreciate your feedback.

2398 I yield back.

2399 Mr. Latta. Thank you.

2400 The chair now recognizes the gentleman from Florida for five
2401 minutes.

2402 Mr. Bilirakis. Thank you, Mr. Chairman, I appreciate it.

2403 To the panel, well, this is actually for Chairman Simons.

2404 The FTC points out it serves its dual mission through
2405 vigorous enforcement, education, advocacy, and policy work, and
2406 by anticipating and responding to changes in the marketplace.

2407 Outside of law enforcement, are there past or recent examples
2408 of policy work, reports, and workshops related to online privacy
2409 that you can share with us today, please?

2410 Mr. Simons. I am drawing a blank right now. But maybe one
2411 of my colleagues could help me.

2412 Ms. Ohlhausen. So just in the past year and a half, we
2413 actually have done six workshops in major policy efforts looking

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2414 at privacy and data security things from industry guidance.

2415 We did a student privacy and NED tech workshop. We did an
2416 informational injury workshop to explore the boundaries and types
2417 of industries consumers may suffer. We did an identity theft
2418 workshop, a connected cars workshop, going to the Internet of
2419 Things.

2420 So I think we have done quite a bit in this space. Just
2421 in recent time, and that's just building on all the other years
2422 of work we've done in this area.

2423 Mr. Bucshon. Okay. Thank you. And Commissioner Phillips
2424 -- does somebody else want to add something?

2425 Mr. Phillips. I was going to.

2426 Mr. Bucshon. Okay. Go ahead, please.

2427 Mr. Phillips. I was just going to say the chairman also has
2428 announced a very ambitious set of hearings to begin this fall
2429 on a variety of issues including those.

2430 Mr. Bucshon. Okay. Very good. Thank you.

2431 Mr. Chopra. And we also -- I would encourage you -- our
2432 2012 privacy report as well as a later report on data brokers
2433 -- those two, I think, provide a real consensus roadmap on a lot
2434 of the initiatives that could be pursued on a bipartisan basis,
2435 in my view.

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2436 Mr. Bucshon. Right. Do you have anything to add? We are
2437 okay?

2438 I will go on the next one.

2439 Commissioner Phillips, do you believe American consumer --
2440 the consumers fully comprehend exactly how much personal health
2441 and financial data has been collected on them? What can the FTC
2442 do to better educate consumers on data collection activity that
2443 industry is engaged on? I mean, you know, it's up to the
2444 individual. But they need to get all the facts. So if you could
2445 answer that I would appreciate it.

2446 Mr. Phillips. Thank you for that question. I think that's
2447 a really important one. I can't sit here and tell you that every
2448 individual fully comprehends the way which data are being
2449 collected, how those data are being used or how those data, as
2450 Commissioner Chopra said earlier, are being shared.

2451 You're right to note that consumers have access to that
2452 information and consumers also have certain expectations. For
2453 instance, you know, my ability to use an app, let's say, that
2454 guides me through traffic and tells me where the traffic jams
2455 are going to be.

2456 I know that it must have information about that traffic from
2457 drivers like me who are supplying it. That balance is a very

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120

2458 important one.

2459 Fostering the innovation as we want to do and also helping
2460 to keep consumer understanding in line, I think that's going to
2461 be one of the biggest challenges that we face over all of our
2462 tenures.

2463 I know it's going to be a topic that we are going to be talking
2464 about in years to come and we look forward to working with you
2465 on that.

2466 Mr. Bilirakis. Thank you. If someone else wants to add,
2467 but would you recommend that the consumer assume that all their
2468 data -- that particular data would be collected when they make
2469 an informed decision as to whether they want to log in or log
2470 out, and a lot of times they don't have the opportunity to opt
2471 out.

2472 Mr. Phillips. Let me sort of start with the second one.
2473 I hope in my own life and I hope that everyone in their own lives
2474 always make informed decisions.

2475 That's not always how we do things. I will admit to you
2476 that I have repeatedly in the last few weeks clicked on any number
2477 of accept accept accepts online. And now I've forgotten the first
2478 part of the question. I apologize.

2479 Ms. Slaughter. I will jump in.

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2480 Mr. Bilirakis. Well, just -- yes. Should I repeat the
2481 question?

2482 Mr. Phillips. If you don't mind.

2483 Mr. Bilirakis. For our consumer, would you recommend the
2484 consumer assume --

2485 Mr. Phillips. Let's assume.

2486 Mr. Bilirakis. Yes, assume that this data is collected on
2487 them.

2488 Mr. Phillips. The short answer is yes. As we engage with
2489 the digital economy, we derive tremendous benefits from that
2490 almost every minute of every day of our lives and in many respects
2491 we are sharing information and so that is a pretty reasonable
2492 assumption.

2493 Mr. Chopra. That's pretty sad, though.

2494 Mr. Bilirakis. Would you like to add something?

2495 Mr. Chopra. I mean, it's pretty sad that we have to assume
2496 helplessness. So I understand we want to -- may want to warn
2497 consumers that anything can be up for grabs. But that can really
2498 lower consumers' confidence in engaging online or engaging in
2499 spaces where they just think everything is going to be taken from
2500 them.

2501 So we have to make sure that we are also not scaring people

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2502 from engaging in productive transactions for their lives because
2503 they fear that someone is always spying on them and this is why
2504 we have to put into place the right framework to protect privacy.

2505 Ms. Slaughter. And from an enforcement perspective it's
2506 our obligation to ensure that when companies represent to
2507 consumers that they are collecting data in a certain way or not
2508 collecting data in a certain way that they're living up to those
2509 representations that they make and that is an area under the
2510 current law where we can and do enforce.

2511 Mr. Bilirakis. Yes, go ahead, please.

2512 Ms. Ohlhausen. And if I could just -- so going back to the
2513 FTC's 2012 privacy report it talks about the importance of it
2514 being context specific.

2515 So if I am sharing my location with the traffic app, I
2516 certainly understand that it knows where I am to route me around
2517 the traffic jams. But we have to understand that the consumer
2518 may not expect that that data will be used in other ways.

2519 For example, we brought an enforcement action in a case
2520 called Goldenshores, which was about a flashlight app and it
2521 worked fine as a flashlight. But the consumers didn't know that
2522 it was also collecting their real-time location data and sharing
2523 that with marketers.

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2524 So I think that is an important thing is the context. Is
2525 the information being used the way the consumer expects to get
2526 the service or is it being shared -- their sensitive data being
2527 shared in some way that they don't anticipate and I think that's
2528 where enforcement and guidance and policy concerns need to focus.

2529 Mr. Bilirakis. All right. I have a couple more questions
2530 but I will submit them for the record. I appreciate it , Mr.
2531 Chairman. I yield back.

2532 Mr. Latta. Thank you very much. The gentleman's time has
2533 expired.

2534 The chair now recognizes the gentleman from New Mexico for
2535 five minutes.

2536 Mr. Lujan. Thank you, Chairman Latta, Ranking Member
2537 Pallone, and Schakowsky, Chairman Walden, for holding this
2538 important hearing with our Federal Trade Commission Oversight.

2539 When it comes to protecting consumers, I am afraid that both
2540 Congress and the FTC have much more to do.

2541 Commissioner Simons, I am going to direct my questions to
2542 you, which I believe you should be able to address without getting
2543 into the FTC's active investigations.

2544 In September of 2017, the credit bureau Equifax announced
2545 a massive consumer data breach due to vulnerability that the

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2546 company knew about but failed to adequately address.

2547 Personal information including Social Security numbers,
2548 birth dates, addresses, and, in some cases, driver license numbers
2549 or partial driver's licence numbers of almost 150 million
2550 consumers were exposed to illicit actors.

2551 Commissioner Simons, is that correct?

2552 Mr. Simons. I am sorry. Is that what?

2553 Mr. Lujan. Is that correct?

2554 Mr. Simons. That's my understanding. That's consistent
2555 with what I --

2556 Mr. Lujan. And, again, it's that Equifax announced the
2557 massive consumer --

2558 Mr. Simons. Yes. This is public information.

2559 Mr. Lujan. Is it correct, due to this breach of the credit
2560 card numbers of more than 200,000 consumers were compromised as
2561 well as other personal information included in the dispute
2562 documents of more than 180 consumers?

2563 Mr. Simons. So I am not sure -- I am not sure if that was
2564 public. So I really don't -- I really --

2565 Mr. Lujan. I believe that that was public as well. So we
2566 can verify that. We'll get that entered into the record.

2567 Mr. Simons. Okay.

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2568 Mr. Lujan. Is it correct that Facebook recently revealed
2569 that 87 million Facebook users had their data exposed to Cambridge
2570 Analytica?

2571 Mr. Simons. I believe there were press reports to that
2572 effect.

2573 Mr. Lujan. Is it correct that in November of last year we
2574 learned that hackers stole information of 57 million Uber drivers
2575 and riders?

2576 Mr. Simons. I think that's reported as well.

2577 Mr. Lujan. So Mr. Chairman, I would like to support a
2578 business insider article into the record. The article states
2579 that since January 2017 at least 15 retailers were hacked and
2580 likely had information stolen from them. Techy include Macy's,
2581 Adidas, Sears, Kmart, Delta, Best Buy, Saks Fifth Avenue, Lord
2582 & Taylor, Under Armour, Panera Bread, Forever 21, Sonic, Whole
2583 Foods, Game Stop, and Arby's.

2584 Commissioner Simons, have you ever shopped at one of these
2585 establishments?

2586 Mr. Simons. Yes.

2587 Mr. Lujan. Me too. I think most Americans have.
2588 Commissioner Simons, is there any reason to expect that there
2589 will be fewer data breaches in the future?

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126

2590 Mr. Simons. That's our goal and that's what we are working
2591 for.

2592 Mr. Lujan. But the reason we are working towards that goal
2593 is because we are concerned that they could happen.

2594 Mr. Simons. Yes, and one of the things that we discussed
2595 earlier is the need for civil penalty authority to act as a
2596 increased deterrent.

2597 Mr. Lujan. So building on that, Commissioner, can you
2598 detail what rules the FTC is currently developing to better
2599 protect consumers' privacy and data?

2600 Mr. Simons. We don't have any rulemakings going on. We
2601 are engaged in enforcement to the extent our current authority
2602 allows us to do that and we are as aggressive as we can under
2603 our current authority.

2604 Mr. Lujan. Does the FTC have rulemaking authority?

2605 Mr. Simons. We do under Magnuson-Moss. But it's very
2606 cumbersome.

2607 Mr. Lujan. But not in this space?

2608 Mr. Simons. No, we -- well, it's general.

2609 Mr. Lujan. Could the FTC use support for authority to have
2610 more clear rulemaking authority to protect consumers' privacy?

2611 Mr. Simons. I think -- I think through individual

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2612 enforcement we are able to make pretty clear what companies are
2613 supposed to do.

2614 So I think we are relatively effective in that regard, and
2615 the rule, I don't think, needs -- I don't think we need a rule
2616 to make it clear what the companies need to do. I think the
2617 authority -- the civil penalty authority would act as a
2618 substantial conditional deterrent.

2619 Mr. Lujan. So some of the numbers that I rattled off --
2620 150 million people exposed with Equifax, 200,000 consumers were
2621 compromised, 180,000 consumers here and there, 87 million with
2622 Facebook and Cambridge Analytica, 57 million Uber drivers, a lot
2623 of people are getting their information stolen.

2624 Commissioner, are you aware of any recent legislation that's
2625 been passed by the Congress and signed into law that will
2626 strengthen privacy protections for consumers?

2627 Mr. Simons. You mean like COPPA?

2628 Mr. Lujan. Anything that you might be aware of.

2629 Mr. Simons. COPPA would be one. That would be a relatively
2630 recent one.

2631 Ms. Ohlhausen. It's not recent, but there's the Fair Credit
2632 Reporting Act as well.

2633 Mr. Lujan. The reason I ask that question is this

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2634 subcommittee, Mr. Chairman, held a hearing on Equifax in October
2635 of 2017. We had Mark Zuckerberg before the full committee in
2636 April 2018. It's now July.

2637 And these breaches took place before the holidays. There
2638 were assurances that the Congress would act to provide more
2639 certainty to the comments that Commissioner Chopra shared -- that
2640 you need to instil confidence.

2641 Nothing happened. I believe, Mr. Chairman, that this
2642 Congress and this committee need to act before the August recess,
2643 need to act before the end of this year to be able to get more
2644 comprehensive privacy legislation adopted and I believe our
2645 constituents and the American people deserve better.

2646 I thank everyone for their time and I see my time has expired.

2647 Mr. Latta. Thank you very much. The gentleman's time has
2648 expired.

2649 The chair now recognizes the gentleman from Georgia for five
2650 minutes.

2651 Mr. Carter. Thank you, Mr. Chairman. I appreciate you
2652 letting me sit in on this.

2653 I thank all of your for being here. You have a very important
2654 job and certainly -- certainly, it's very important to consumers.

2655 Full disclosure -- currently I am the only pharmacist serving

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2656 in Congress for over 30 years. I practiced in retail pharmacy
2657 and I am very familiar with what's going on in that. And I
2658 wanted to ask you -- I want to talk specifically about PBMs --
2659 pharmacy benefit managers -- where three companies control 78
2660 percent of the market.

2661 First of all, Mr. Simons, you and I met after you became
2662 director and we met and we talked about the anti-competitive
2663 nature of this. Would you consider three companies owning 78
2664 percent of the market be a problem?

2665 Mr. Simons. Certainly, a market structure in which you
2666 might find and we might look for anti-competitive conduct.

2667 As I mentioned before, in terms of anti-trust enforcement,
2668 the places you look are the places where there are small numbers
2669 of firms with large shares.

2670 Mr. Carter. Right.

2671 Mr. Simons. And this would be such a case.

2672 Mr. Carter. One of the things that confuses me is when we
2673 talk about vertical integration and horizontal integration and
2674 often times you tell me, well, vertical integration is fine and
2675 we just have to worry about horizontal integration.

2676 Mr. Simons. No, I wouldn't say that.

2677 Mr. Carter. Well, I appreciate you correcting me because

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2678 that is -- that's probably a misnomer that I want to dispose of
2679 because the vertical integration as we see it right now, all of
2680 you know what's going on. All of you know what's going on.

2681 We've got the top three -- those three that I mentioned --
2682 PBMs that control 78 percent of the market -- you have got CVS,
2683 Caremark that now is buying Aetna. So all of a sudden you're going
2684 to have a vertical integration that includes the insurance company
2685 owning the pharmacy benefits manager owning the pharmacy.

2686 Now you have got Cigna buying out Express Scripts. Did you
2687 know that Express Scripts, according to volume, is the third
2688 largest pharmacy chain in America right now?

2689 So now you have gone number one at CVS. You have got number
2690 three at Express Scripts. Cigna is going to be the insurance
2691 company.

2692 Express Scripts will be the PBM and there will be the
2693 pharmacy, and that vertical integration you yourself, Mr. Simons,
2694 the FTC investigated in January of 2012 regarding patient steering
2695 from Caremark to CVS. And what was going on there?

2696 We see it. I've got numerous examples that I can share with
2697 you and I will be glad to share with you, and yet they hide under
2698 the auspices of a lack of transparency.

2699 I mean, this is the most opaque system that's known out there

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2700 -- the most opaque system because -- and they hide behind that
2701 and their profits have been just outrageous.

2702 In fact, I don't like to read but I am going to read this:
2703 according to data from CMS, between 1987, when PBMs first became
2704 involved in this when they were formed, and 2014 expenditures
2705 on prescription drugs have jumped by 1,100 percent.

2706 There's been 1,553 percent increase in per employee
2707 prescription drug benefit cost since 1987. In the last 10 years,
2708 the two largest PBMs have increased their profit margins by nearly
2709 600 percent.

2710 Now, folks, I am not opposed to anybody making money. But
2711 if you ask them what is your mission -- what is the mission of
2712 a PBM -- they'll tell you it's to control prescription drug prices.

2713 Well, how is that working out? Why is that an initiative
2714 of the president of Health and Human Services right now to lower
2715 prescription drug prices?

2716 If they are fulfilling their mission, and yet they're hiding
2717 again and this is what we look to the FTC to do. Am I wrong?

2718 Is that not your responsibility? Should I be talking to some
2719 other agency?

2720 Mr. Simons. Well, it's partially our responsibility. So
2721 we look at anti-competitive conduct and if they're engaging in

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2722 anti-competitive conduct we should be challenging it.

2723 Mr. Carter. So I -- just a quick story. I had a pharmacist
2724 that shared a story with me -- that he filled a prescription at
2725 his drug store -- his drugs store -- for his wife, who was covered
2726 under Caremart insurance.

2727 That night he got a call at his home from CVS saying if you
2728 get it filled at our pharmacy you can get a lower co-payment.

2729

2730 Now, is there supposed to be a firewall? What happened to
2731 that firewall? This was his wife.

2732 Mr. Simons. I understand.

2733 Mr. Carter. That's the kind of behavior that's going on
2734 here. Yet and we look to you to help us with this, not because
2735 of the pharmacy but because of the consumer. It's the consumer
2736 who's suffering here, because as you do away the independent
2737 retail pharmacies, you do away with choice, less competition,
2738 that's not going to benefit the consumer at all.

2739 It's just very frustrating when you have -- when you have
2740 a profession where the PBMs are responsible -- they create the
2741 pharmacy networks. They decide who's going to be let into that
2742 network and who's not going to be let into that network.

2743 They direct the patients to the certain pharmacies and it

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2744 they own the pharmacy who do you think they're going to direct
2745 it to?

2746 My one question is who is supposed to be watching this.
2747 I thought it was the FTC. Can I get a commitment that you will
2748 look into this?

2749 Mr. Simons. We are looking into it.

2750 Mr. Carter. You're looking into it now?

2751 Mr. Simons. You and I had a meeting and --

2752 Mr. Carter. We did.

2753 Mr. Simons. -- and I took what you said to heart.

2754 Mr. Carter. Thank you.

2755 I look forward to continuing that conversation with you.

2756 Mr. Latta. Thank you very much.

2757 Mr. Carter. Thank you. I yield.

2758 Mr. Latta. The gentleman's time has expired and the chair
2759 now recognizes the chairman from Maryland for five minutes.

2760 Mr. Sarbanes. Thank you, Mr. Chairman, for the opportunity
2761 to participate in the hearing. Just before I start my questions,
2762 I want to say I agree 1,000 percent with my colleague. These
2763 mergers are kind of out of control. They're putting the consumer,
2764 really, in a very, very bad position.

2765 I want to thank you all for being here, for your work. This

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2766 is an incredibly important commission in terms of protecting
2767 consumers, obviously, and the opportunities to lean in to do that,
2768 I think are expansive right now, if you look across all the various
2769 areas of jurisdiction that you have.

2770 Commissioner, is it Simmons? Is that the pronunciation?

2771 Mr. Simons. It's Simons.

2772 Mr. Sarbanes. It's Simons. Okay.

2773 Mr. Simons. One M, two S's.

2774 Mr. Sarbanes. I was wondering why everyone was saying
2775 Simmons.

2776 Mr. Simons. But, you know, it's remarkable how often it's
2777 pronounced so I am used to it.

2778 Mr. Sarbanes. Okay. So Commissioner Simons, I wanted to
2779 talk a little bit about biologic drugs and biosimilars. The FTC,
2780 as I understand it, doesn't currently have the authority to
2781 monitor agreements made between the manufacturers of biologics
2782 and biosimilars, and I wanted to know if you thought it was
2783 important that the FTC get that authority and, if so, why.

2784 Mr. Simons. I mean, in terms of, like, pay for delay and
2785 --

2786 Mr. Sarbanes. Exactly.

2787 Mr. Simons. Yes, that would be helpful.

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2788 Mr. Sarbanes. I mean, my understanding is that if you look
2789 at the authority you have over the agreements between brand name
2790 drug manufacturers and generic drug manufacturers where you can
2791 monitor this anti-competitive behavior, the pay for delay
2792 agreements, and so forth, that you can have a significant impact
2793 on the overall cost to the consumer out there is you take those
2794 actions.

2795 Can you describe a little bit some of the tools you have
2796 when you go after those pay for delay agreements?

2797 Mr. Simons. So the statute you're talking about requires
2798 that if there's any agreement between a brand and a generic I
2799 think that delays the marketing of the product that they have
2800 to report that to the FTC and those disclosures are significant
2801 way in which the commission finds out about these agreements and
2802 whether it gives a rough sense early -- you know, tells us where
2803 to look for whether these agreements might be anti-competitive
2804 or not.

2805 So it's -- the alert says hey, these agreements, and it's
2806 a big brief description of what they are, and we can look at them
2807 and then figure out okay, which ones look like they're problems
2808 and then we go after them.

2809 Mr. Sarbanes. It's incredibly important. I think there's

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2810 a study out there that shows that while brand name drugs are about
2811 10 percent of all drugs that are dispensed, I think that's
2812 including biologics in the equation -- they make up about 72
2813 percent of the annual U.S. drug spending.

2814 So there's a huge amount of money on the line, obviously,
2815 from patients directly and from payers like Medicare and Medicaid,
2816 government payers that can be saved by monitoring these
2817 agreements, blocking these agreements.

2818 But it's really critical to get that same kind of authority
2819 with respect to the biologics and the biosimilars because in the
2820 same way those paid for delays are decreasing market competition.

2821 They're keeping the costs high. That's hurting patients at the
2822 counter, and I want to, again, commend you on the work you're
2823 doing with respect to the brand name drugs and the generics.

2824 But the Medicare Modernization Act of 2003, which gave FTC
2825 this authority, as you know, didn't extend it to biologics and
2826 biosimilar drugs.

2827 So I will be introducing soon the Biosimilars Competition
2828 Act of 2018 to grant FTC that authority so that you can begin
2829 to monitor these deals, punish the bad actors and hopefully deter
2830 many of these backroom deals from being made in the first place.

2831 We look forward to any comments you all will have with respect

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137

2832 to the proposed because we do want to give you that authority.

2833 Mr. Simons. Thank you very much.

2834 Mr. Sarbanes. I wanted to switch gears really quickly. You
2835 had -- probably two or three members ask you about your authority
2836 as it related to Facebook and that earlier consent decree and
2837 I wanted to pick up on that a little bit.

2838 I was sort of struck in a recent earnings call -- the various
2839 Wall Street analysts were, like, peppering Mark Zuckerberg and
2840 Sheryl Sandberg about the implications of Europe's new privacy
2841 law, the general data protection regulation -- how it might impact
2842 the company and its earnings.

2843 Not one person -- not a single analyst -- asked about the
2844 FTC's announced investigation into Facebook's privacy concerns,
2845 potential violation of the 2011 consent decree.

2846 So the market, in any event, doesn't seem to be taking that
2847 consent decree--your ability to enforce it and punish Facebook
2848 if you see violations, seriously from a kind of market standpoint.

2849 Actually, Commissioner Chopra, I would like your
2850 perspective, if you could share it quickly, just about this issue
2851 of the commission's credibility.

2852 I mean, to me that treatment on the earnings call suggests
2853 that they're not taking it seriously. Can you speak to how the

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138

2854 FTC could be taken more seriously on things like that and the
2855 tools that you could maybe uses to do that?

2856 Mr. Chopra. Without speaking about this specific matter
2857 at hand, the FTC very energetically goes after companies that
2858 break the law and when it comes to small time scammers, we really
2859 do lay down the hammer. We seek bans of executives. We sometimes
2860 close down a business.

2861 I would like us to apply the law evenly regardless if it's
2862 a small time scammer or a big time publicly traded corpora ration
2863 and we -- it's our duty, I think, to apply that law equally and
2864 the market needs to see that we are willing to do that. Otherwise,
2865 the credibility of our orders and enforcement will not be as high
2866 as it needs to be.

2867 Mr. Sarbanes. Well, thank you very much. I appreciate
2868 that. I agree with you and I think we do need to make sure the
2869 big guys receive the same kind of attention as the small guys.

2870 The public's confidence in the commission, I think, is
2871 dependent upon that.

2872 Thank you, and I yield back my time.

2873 Mr. Latta. Thank you. The gentleman's time has expired,
2874 and the chair now recognizes the gentleman from California for
2875 five minutes.

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139

2876 Mr. McNerney. Well, I thank the chair and the ranking
2877 member. I thank the commissioners for your service with limited
2878 resources. It's a tough job.

2879 In recent years, we've witnessed numerous data breaches
2880 incidents from many companies like Facebook, Equifax, Target,
2881 Home Depot, LinkedIn, and Anthem.

2882 The FTC does have resources to help consumers who have been
2883 victims of data breaches.

2884 Commissioner Slaughter, what more could the FTC be doing
2885 for consumers?

2886 Ms. Slaughter. Thank you for the question, Congressman.

2887 I think my colleagues and I have all spoken particularly
2888 in the area of data breach and data security. Well, I don't say
2889 all -- several of us have spoken.

2890 No, I think all, actually -- correcting myself -- about how
2891 we could benefit from data security legislation, perhaps data
2892 breach notification legislation that gave us more specific
2893 authority and perhaps rulemaking authority with respect to data
2894 security and data privacy.

2895 Mr. McNerney. So that would be your specific recommendation
2896 as it you -- the FTC be given rulemaking authority?

2897 Ms. Slaughter. Yes. I think we've outlined -- a number

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140

2898 of us have outlined different issues that we -- different kinds
2899 of authorities that would be useful in different ways.
2900 Rulemaking is one. Civil penalty authority is another.

2901 I think we will -- we do and we will go after violations
2902 of the law where we find them now. But deterring these problems
2903 on a large scale would be -- we would be better able to do that
2904 with a little bit more authority.

2905 Mr. McNerney. Thank you.

2906 Commissioner Chopra, do you have anything to add to that?

2907 Mr. Chopra. Well, I think that you mentioned Target and
2908 some other large retailers. I just want to underscore,
2909 particular with respect to stolen credit card information at these
2910 large retailers, this actually impacts a wide swath of our banking
2911 industry as well. Community banks, others, who in some ways have
2912 to take those losses.

2913 So we require financial institutions. We require certain
2914 health care institutions to protect data. I think we, in some
2915 ways, need to level the playing field and make sure other big
2916 sectors of the economy are doing the same thing.

2917 Mr. McNerney. Thank you.

2918 Chairman Simons, facial recognition features are
2919 increasingly being incorporated into technology. However, just

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141

2920 last week, Brad Smith from Microsoft stated that facial
2921 recognition technology should be regulated, which is voicing a
2922 great concern on this issue.

2923 What is the FTC doing to address privacy concerns raised
2924 by facial recognition technology?

2925 Mr. Simons. Thank you for the question, Congressman.

2926 So this is a good example of something that maybe even a
2927 few years ago was not really considered sensitive information,
2928 and now with the development of technology now it is sensitive
2929 information.

2930 And so one of the things we are following and are careful
2931 about is whether people are being misled about information that
2932 is sensitive information for them and whether the companies have
2933 disclosed how they're using it in the correct way.

2934 Mr. McNerney. Thank you.

2935 Mr. Chopra, do you have anything to add to that?

2936 Mr. Chopra. Well, I agree with Chairman Simons.

2937 I will just add I think the potential for misuse with facial
2938 recognition implicates a lot of issues and values that we are
2939 not always best situated to combat.

2940 I don't know if I want to live in a society where everyone
2941 knows my movements at all time and where my face can be scanned

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142

2942 and it can be used to decide other things about me.

2943 Mr. McNerney. Hear, hear.

2944 Mr. Chopra. So it's something I am worried about when it
2945 comes to misuse. I saw Microsoft's announcement about this.

2946 We will do what we can.

2947 But I want to be clear. We can't solve everything with
2948 respect to the issues with facial recognition. We have limited
2949 authority to do that.

2950 Mr. McNerney. So this is an area you -- this is an area
2951 you think Congress needs to get involved in?

2952 Mr. Chopra. Well, there's -- I think it involves a lot of
2953 issues beyond our narrow lens including really our values as
2954 Americans and our civil liberties, and that is something that
2955 we want enforce the law with respect to promises that are made
2956 or misuse of data in certain commercial transactions.

2957 But I think it's on you guys to really think about the big
2958 picture.

2959 Mr. McNerney. Okay. Thank you.

2960 Chairman, I am going to follow up on the Cambridge Analytica
2961 issue.

2962 The FTC entered a consent decree with Facebook in 2011.

2963 In 2015, it was revealed that Cambridge Analytica illegitimately

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143

2964 obtained consumer data.

2965 Yet, it was not until this spring that the commission
2966 announced it was investigating. Now, I realize you can't comment
2967 on Facebook specifically, but can you tell us what steps the
2968 commission is taking to improve how it monitors compliance with
2969 consent decrees?

2970 Mr. Simons. Yes. So this is -- without saying anything
2971 about the particular matter, so this is another example of
2972 self-critical examination.

2973 So when this all came to light, one of the things we did
2974 was we started a task force to deal with potential changes in
2975 how we do our orders.

2976 Mr. McNerney. And how you enforce those?

2977 Mr. Simons. How we -- how we write them and how we enforce
2978 them.

2979 Mr. McNerney. Because, I mean, you don't enforce them.
2980 There's no point in --

2981 Mr. Simons. Right. But also you have to write them in the
2982 right way. So you have to -- you have to get -- you have to get
2983 the company committed to doing what it needs to do and you have
2984 to -- and also in terms of being able to monitor them properly.

2985 So writing the orders is important and enforcing is

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144

2986 important. Both are important.

2987 Mr. McNerney. Thank you for that answer.

2988 Mr. Chopra. Congressman, if I can quickly add, I think we
2989 all take enforcement of our orders seriously. I will note that
2990 when Chairman Simons was -- his previous stint at the FTC he
2991 achieved and obtained a very significant penalty against a larger
2992 order violator and I think we will continue with that spirit and
2993 use all the tools we can to correct violations of our orders.

2994 Mr. McNerney. Thank you.

2995 I would like to yield back.

2996 Mr. Latta. Thank you very much.

2997 The gentleman's time has expired and at this time the ranker
2998 and I are going to ask one last quick question each that we agreed
2999 upon.

3000 Chairman, I was wondering if I could start, to just ask my
3001 last question to you. I want to touch on an issue we've all heard
3002 about. We have seen advertisements at target -- the senior
3003 population -- we've all seen or heard the lawsuit advertisements
3004 that proclaim that certain medications or drugs may cause
3005 complications and to contact the organization or law firm airing
3006 the advertisement.

3007 I also understand that these ads may at times be misleading

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145

3008 or in some cases just outright fraudulent, leading to potential
3009 physical harm.

3010 Is there an issue the -- is this an issue that the FTC is
3011 focused on and, if you are, what is the FTC doing to prevent
3012 misleading or false ads.

3013 Mr. Simons. Yes, so this is potentially deception in a very
3014 sensitive area and it also, because of the area of its involvement,
3015 it's something that we would do in conjunction with the FDA.

3016 Mr. Latta. Okay. But this is something you're going to
3017 be -- you're actively working on then?

3018 Mr. Simons. Well, you brought it to our attention, yes.
3019 So we are -- this is some of the concern, yes.

3020 Mr. Latta. Okay. Well, thank you very much.

3021 And I will recognize the gentlelady from Illinois, the ranker
3022 of the subcommittee.

3023 Ms. Schakowsky. As I mentioned in my opening statement,
3024 the European Commission announced a \$5.1 billion anti-trust fine
3025 on Google.

3026 The E.U. alleges, among other things, that Google, for smart
3027 phone makers, to preinstall Google Search together with its Play
3028 Store and Chrome browser and sign agreements not to sell devices
3029 on rival Android systems by imposing its bundled package on smart

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146

3030 phone makers.

3031 Google, arguably, gave itself an advantage over its
3032 competitors. So, Chairman Simons, I know that you have announced
3033 a series of hearings that will examine competitive -- a
3034 competition policy.

3035 But as of right now, are there any limitations under U.S.
3036 law that would prevent the FTC from looking into Google's conduct
3037 regarding this kind of bundling?

3038 Specifically, do you have enough authority to consider if
3039 Google's conduct is anti-competitive?

3040 Mr. Simons. So thank you for the question.

3041 We do have enough authority to determine whether it's
3042 anti-competitive or not. And let me just say, we are going to
3043 read the -- what the EU put out very closely.

3044 We are very interested in what they're doing. I had a
3045 conversation with Commissioner Vestager yesterday. So we are
3046 very interested in what the EU is --

3047 Ms. Schakowsky. I am sorry. Who is that person?

3048 Mr. Simons. She's the commissioner. She's my counterpart
3049 of the European Commission's competition directorate.

3050 So but in terms of -- in terms of what they look at versus
3051 what we look at, their regulatory regime is a little different

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147

3052 than ours.

3053 So once they find that a company is dominant, as I understand
3054 it, that imposes upon the company kind of like a fairness
3055 obligation irrespective of what the effect is on the consumer.

3056 Our regulator -- our anti-trust regime requires that there
3057 be a harm to consumer welfare. So the consumer has to be -- has
3058 to be injured.

3059 So the two tests are a little bit different. But we are
3060 going to look closely at what the EU is doing.

3061 Ms. Schakowsky. Thank you.

3062 I yield back.

3063 Mr. Latta. Thank you very much. The gentlelady yields
3064 back.

3065 And seeing that there are no other further members here to
3066 ask any questions, again, we want to thank you all for being with
3067 us today and appearing before the subcommittee.

3068 Before I -- we do conclude, I would like to include the
3069 following documents -- to submit them for the record by unanimous
3070 consent: a letter from ACA International, a letter from the
3071 Electronic Privacy Information Center, a letter from the
3072 Coalition Trade Association, and a letter from the Internet
3073 Association.

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3074 And without objection, so ordered.

3075 [The information follows:]

3076

3077 *****COMMITTEE INSERT 6*****

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3078 Mr. Latta. Pursuant to committee rules, I remind members
3079 that they have 10 business days to submit additional questions
3080 for the record, and I ask that our witnesses submit their responses
3081 within 10 business days upon receipt of those questions.

3082 And without objection, the subcommittee stands adjourned.

3083

3084 [Whereupon, at 12:02 p.m., the committee was adjourned.]

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