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Congress of the United States

House of Representatives

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August 7, 2018

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Dear Chairman Simons:

Thank you for appearing before the Subcommittee on Digital Commerce and Consumer Protection on Wednesday, July 18, 2018, to testify at the hearing entitled "Oversight of the Federal Trade Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, August 21, 2018. Your responses should be mailed to Ali Fulling, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to ali.fulling@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Robert E. Latta
Chairman
Subcommittee on Digital Commerce
and Consumer Protection

cc: Janice D. Schakowsky, Ranking Member, Subcommittee on Digital Commerce and Consumer Protection

Attachment

Additional Questions for the Record

The Honorable Robert E. Latta

1. In your testimony you noted the importance of the FTC's antitrust authority, and the filings which are submitted to the agency under the Hart-Scott-Rodino Act ("HSR"). Investors point out that the extent of shareholder monitoring and communication with management of companies has increased significantly over the last 20 years, and this activity, in their view, has been productive and beneficial to the marketplace. My understanding is that there is growing concern across the investment community that the FTC needs to update its interpretation that only passive investors can use the HSR "investment-only exemption" from filing requirements. These investors suggest that without HSR reform, there is a chilling effect on investors being able to engage with companies, and there are unnecessary filing burdens for investments of 10 percent or less that raise no substantive antitrust concerns.

    a. Do you believe it is now time for the FTC to consider the merits of HSR reform?

    b. Would you consider exploring this topic as part of upcoming FTC hearings, and provide this committee with your thoughts on the results of those hearings?

2. In December 2016, the FTC issued a Notice of Proposed Rulemaking announcing proposed changes to the Commission's Contact Lens Rule. In March 2018, the Commission held a workshop on the Contact Lens Rule and received comments on the proceedings until early April 2018. Does the FTC expect to update its 2016 draft for comment or move directly to issue a final Contact Lens Rule? If the Commission decides to solicit additional public input to update the 2016 NPRM, how long would you anticipate extending the comment period and what would be the timeline for the issuance of the final Contact Lens Rule?

3. Please explain in detail how the FTC determines whether to proceed against a particular defendant in district court or in an administrative proceeding. If a decision is made to proceed in district court, how does the FTC determine whether to proceed through the use of traditional litigation, administrative proceeding, or through relief such as ex parte proceedings, preliminary injunctions to freeze assets, or injunctions for receivership? Please account for the total number of incidences in which the FTC elected to use each of these enforcement tools in the last 24 months, and the FTC's success rate for each enforcement tool over the same period of time.

4. Is the FTC required to comply with Federal Rule of Civil Procedure Rule 65(b)(1) that a plaintiff show "immediate and irreparable injury" when seeking an ex parte request for a temporary restraining order ("TRO") that would freeze a defendant's assets?

5. What percentage of the FTC's requests for TRO asset freezes have included the presentation of evidence to the court showing that specific individual defendants in the case-at-hand had taken steps to hide or dissipate assets?

6. Section 13(b) of the FTC Act states that a court may grant a TRO to the FTC without the FTC posting a bond, "after notice to the defendant." In an ex parte proceeding, in which the Commission does not give any notice to the defendant and the defendant has no opportunity to oppose the issuance of the order, is the FTC required to post a bond? Are there any cases where a TRO has been granted without the FTC posting a bond? Should the FTC be required to post a bond in these cases?

7. What consideration does the FTC take in evaluating enforcement actions based on a standard of unfairness in the absence of any proof of actual injury? If so, is "unfairness" determined solely by objective, tangible criteria? Are any subjective factors part of an "unfairness" standard? Is a hypothetical injury a sufficient basis for an enforcement action?

8. In consent orders entered into between the FTC and companies, have there been requirements for companies to provide personal information about individuals to the agency, and what security protections exist at the FTC to safeguard such personal information?

9. How does the FTC determine its priorities for industries and enterprises to target for enforcement action? For example, to what extent does the agency's online complaint tracking tools like Consumer Sentinel Network, Consumer Response Center, or the Do-Not-Call Registry play, or not play, in that analysis in determining whether or not to bring cases against illegal robocalling operators or other consumer protection cases.

10. In April of this year, this subcommittee held a hearing on robocalls and heard from technology companies about various technology solutions and strategies for combatting robocalls. This is one of the top complaints the FTC has every year. What plans do you have moving forward to combat the pervasive problem of illegal robocalls?

11. There are a number of advertisements that claim certain medications or drugs may cause complications and prompt the viewer to contact to the organization or law firm airing the advertisement for possible recourse. Some lawsuit ads and websites use phrases like "recall" and "medical alert," while others show flashing lights and sirens. These advertisements may at times be misleading or fraudulent, leading to potential physical or financial harm for consumers, especially our senior citizen community. Under your leadership, will the FTC focus on these potentially deceptive advertisements and, if it will, what processes or activities can the FTC improve or highlight to protect consumers, including seniors, from false or misleading advertisements?

12. Over a year ago, your colleague Commissioner Ohlhausen, in her former capacity as Acting Chairman, announced a set of process reforms for its consumer protection investigations and enforcement. For example, she instructed the Bureau of Consumer Protection to form an internal working group to examine the agency's use of Civil Investigative Demands (CIDs) for documents and information in non-public investigations.

a. Please describe in detail what progress and recommendations have been made by the FTC's various working groups in the intervening year?

b. What specific steps has the Commission taken in implementing these process reforms?

c. Specifically, please describe what recommendations were made by FTC staff about adopting more narrowly focused use of Civil Investigative Demands, as well as whether CIDs should require notice and approval by more than one Commissioner?

13. Commissioner Ohlhausen also instructed the Bureaus of Consumer Protection and Economics to integrate the agency's economists earlier in consumer protection investigations. Please explain in detail how the Commission's economic expertise is brought to bear at the initiation of a non-public investigation through any potential enforcement action.

    a. Does the Bureau of Economics currently provide economic analysis and information in each consumer protection investigation? If it does not, why not?

    b. Is the Bureau of Consumer Protection required to consider analysis and information from the Bureau of Economics in evaluating whether an investigation warrants enforcement action? If it is not, why not?

    c. Would the publication of a summary description of the Bureau of Economics' analysis and justification in support of, or against, consumer protection enforcement actions be in the public interest?

14. FTC consent orders against companies like Equifax, Facebook, Google, and Uber require independent, third-party "assessments" (i.e., audits) to certify on-going compliance with the provisions of the consent order by the subject company. For example, Facebook was required in part "to establish and maintain a comprehensive privacy program designed to address privacy risks associated with the development and management of new and existing products and services, and to protect the privacy and confidentiality of consumers' information."[1]

    In response to the Committee's questions, Facebook indicated on June 29, 2018: "To date, three independent privacy assessments prepared by PwC have been completed and submitted to the FTC: a 180-Day assessment report (dated April 16, 2013), a biennial report covering the period between February 12, 2013 and February 11, 2015 (dated April 13, 2015), and a biennial report covering the period between February 12, 2015 and February 11, 2017 (dated April 12, 2017). In each of these assessments, PwC determined that Facebook's privacy controls were operating with sufficient effectiveness to provide

[1] https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep; https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookdo.pdf.

reasonable assurance to protect the privacy information covered under the FTC Consent Order, in all material respects."[2]

a. Please explain in detail the process following an FTC consent order requiring an initial assessment report, in particular which party (subject company or auditor) is responsible for preparing the initial assessment and whether the assessment is fully available to the public. Are subsequent biennial third-party assessments submitted and reviewed by the FTC, and are they available to the public?

b. Please explain in detail what steps the FTC could pursue to strengthen the effectiveness of its assessment/audit compliance regime?

c. Has the FTC considered and/or conducted its own independent audit of a subject company's compliance with its consent order requirements? If not, why not?

d. Does the FTC receive a copy of every assessment conducted by the independent, third-party auditor required under a consent order entered into by the agency?

e. How does the FTC determine which independent, third-party auditing firms are qualified to conduct and prepare such assessments? Does the FTC maintain a schedule of eligible firms to prepare assessments? If so, what specific auditing firms are currently eligible?

f. Does the FTC approve, formally or informally, which companies are permitted to complete the audits for companies under order with the FTC?

15. Some have claimed that when the FCC restored internet freedom by repealing the Obama era rules that stripped the Federal Trade Commission's authority over Internet service providers, it somehow made the internet less safe for consumers. The FCC's *Restoring Internet Freedom Order* actually restored the power of the FTC, the nation's premiere consumer protection agency, to protect internet users from unfair and deceptive practices. Please explain in detail how you believe the agency's authority can be leveraged to consistently protect consumers across the internet?

The Honorable Michael C. Burgess

1. An increase in hospital market concentration caused by hospital mergers has resulted in price increases. These mergers may also substantially lessen quality and competition by undermining the ability of physicians, on behalf of patients, to shop for hospital affiliations based upon quality factors, such as adequacy of hospital staffing, equipment, and administrative support services that would allow physicians to spend more time with their patients. Will the FTC evaluate future hospital mergers along these quality dimensions?

[2] https://docs.house.gov/meetings/IF/IF00/20180411/108090/HHRG-115-IF00-Wstate-ZuckerbergM-20180411-SD003.pdf

2. The cost of complying with administrative regulatory obligations has resulted in an increasing number of physicians leaving their practices that could have offered the marketplace more competition. Rather than compete with hospitals, physician practices are pressured by the added administrative costs to vertically integrate with hospitals. What are the potential benefits and risks of vertical integration for the healthcare marketplace?

    a. One good way of introducing competition into hospital markets would be to restore the Stark exception for physician-owned hospitals that the Affordable Care Act revoked. Will the FTC support restoring this "whole hospital" exception?

3. Many academics believe that healthcare provider markets are "highly concentrated." In fact, cities like Pittsburgh, Boston, and San Francisco are controlled by just one or two dominant multi-hospital systems. These systems drive up healthcare costs and marginalize physicians who wish to remain independent. What is the FTC doing alleviate this growing issue?

4. Health insurers claim that by merging they will obtain bargaining leverage with providers that will enable a lowering of premiums. An FTC retrospective study of the effect of past mergers on provider reimbursement and, most importantly, premiums, would be helpful in evaluating future health insurance mergers. Has FTC considered such a study? Would the FTC need congressional authority to undertake that study in health insurance markets?

    a. Relatedly, there is a concern that post-merger an insurer could exercise buyer/monopsony power in physician markets. Could FTC study the effects of past health insurer mergers on physician reimbursement and determine whether a decline in reimbursement has led to a decline in the quantity and/or quality of physician services?

5. In December 2016, the FTC issued a Notice of Proposed Rulemaking announcing proposed changes to the Commission's Contact Lens Rule. These changes propose a new regulatory requirement on providers, requiring doctors to collect and maintain for 3 years a signed document indicating that each patient received a copy of their contact lens prescription. Out of 309 complaints about prescriber prescription release, the FTC has determined that 55 warning letters to prescribers were necessary over the course of a decade. How does this small percentage of complaints and enforcement action provide sufficient evidence to justify imposition of a costly new regulatory burden on an entire industry?

6. In March 2018, the Commission held a workshop on the Contact Lens Rule and received comments on the proceedings until early April 2018. In May 2018, I led a letter with Rep. Bobby Rush requesting that the Commission reconsider this Notice of Proposed Rulemaking. Does the FTC expect to update its 2016 draft for comment or move directly to issue a final Contact Lens Rule? What is the FTC's anticipated timing for action?

7. The FTC has jurisdiction over enforcing the Fair Debt Collection Practices Act. This Act was enacted in 1977 and many new technologies have come into use since then. Many third-party collectors have fallen prey to frivolous litigation as a result of unclear rules. The Bureau of Consumer Financial Protection has indicated that it plans to propose rules for the Fair Debt Collection Practices Act. How will these potential rules reconcile eliminating bad actors with creating clear, but not overly burdensome requirements for those acting responsibly? What is the timeline for these potential rules?

8. The FTC has engaged in efforts against "illegal robocallers" that use technology to abuse consumers with unwanted nuisance calls. However, there is confusion about who is considered a robocaller. For example, those who have a legal, established business relationship with a consumer and a need to contact them often fall under the definition of a robocaller. Can you please describe in detail what defines a robocall? How are illegal robocalls differentiated from legal business calls?

The Honorable Leonard Lance

1. The recent "FTC Staff Offers Business Guidance Concerning Multi-Level Marketing" ("MLM Guidance") states: "At the most basic level, the law requires that an MLM pay compensation that is based on actual sales to real customers, rather than based on wholesale purchases or other payments by its participants."

    a. Which specific "law" is referenced here? Identify the specific statutes and case law.

2. Please elaborate on the specific criteria or vetting process that is used by the Commission to determine if an independent organization purporting to be a consumer watchdog, or a corporation that operates as a direct competitor in the marketplace, is a reliable source of relevant information?

The Honorable Brett Guthrie

1. The FTC Franchise Rule (Rule) is the governing federal regulation for franchise businesses and I understand it is due for renewal this year. Constituents of mine have raised concerns that if the Rule is eliminated or allowed to expire that very negative consequences could result for both franchisors and franchisees. The concern for franchisees centers around the denial of access to important pre-investment information for them, and on allowing unscrupulous franchisors to offer franchises in thirty-five states without providing any disclosure at all. On the other hand, for franchisors the risk is seeing a patchwork of laws to develop across the country, including a spike in complicated and onerous regulation.

    a. Based on the information that has been shared with me, I would ask that you carefully consider the usefulness of the existing Rule and that you give full and fair consideration to the concerns raised by franchisors and franchisees. Do you intend to move forward with a renewal of the Rule and if so, what is your

expected time frame? Is the Rule under consideration for expiration under the Administrations "Two out, one in" deregulatory effort?

The Honorable Gus Bilirakis

1. Over 4 billion robocalls were placed nationwide in June 2018, equaling roughly 12.7 calls per person affected. Are you concerned about the incidence rate of robocalls and their potential impact for fraud and victimizing consumers, and what can the FTC do to limit the impact of illegal robocalls?

2. Do you have all of the tools you need to succeed in the mission of combatting robocalls, or do you believe further legislative action is needed? If so, what can Congress do to help in this effort?

3. What role can the FTC play in combatting the national opioid crisis, including the marketing and advertising of patient recovery services, illegal opioids as well as prescription and over-the-counter drugs?

4. I'd like to congratulate the FTC on its successful enforcement action against an online hotel booking reseller, Reservation Counter. As part of the enforcement action, the FTC alleged that the party misled consumers through ads, webpages, and call centers that led consumers to mistakenly believe they were reserving the rooms directly from the hotel. The Commission further alleged that the company failed to adequately tell consumers that their credit cards would be charged immediately, rather than after they arrived at the hotel. The FTC's constructive action highlights the good work it can do to protect consumers. While this enforcement action is a good first step, do you believe this hotel scam website problem may be a symptom of a larger problem when it comes to the online hotel booking market? What do you feel is the FTC's role to help mitigate websites that have not been investigated by the FTC, from using harmful tactics against consumers?

5. In 2016, the American Medical Association ("AMA") passed a resolution noting that some lawsuit advertisements emphasize the negative side effects of prescription medications, while ignoring their life-saving benefits and FDA-approval. The AMA resolution referred to these ads as "fear mongering" and "dangerous." Earlier this year, the AARP issued a Fraud Alert to its members warning them about lawsuit advertisements soliciting patients to join class actions if they have taken certain medications. The AARP Fraud Alert noted that the "surge in television, radio and internet ads from law firms and lawsuit marketing companies is causing some patients to take serious risks." These lawsuit advertisements often frighten viewers, especially the older adults they frequently target, into discontinuing or refusing to take FDA approved medication prescribed by a physician, often for life-threatening conditions. What is the FTC currently doing to prevent false and misleading lawsuit advertisements from scarring patients, particularly among vulnerable populations, into discontinuing or refusing doctor prescribed and FDA approved medications?

6. There are a number of lawsuit advertisements that portray specific FDA approved drugs as inherently dangerous by using frightening imagery, words, and noises. Some lawsuit

ads and websites use phrases like "recall" and "medical alert," while others show flashing lights and sirens. Others even direct viewers to call numbers like 1-800-BAD-DRUG and show people being rolled into a morgue. Many times, these advertisements will display an FDA logo and feature a narrator dressed in a physician's white coat. Advertisements that use these bombastic and deceptive tactics, often supplemented by little or no mention of a drug's FDA approval or benefits, present a clear danger to consumers—who in this instance are patients taking prescribed medications. In fact, an FDA adverse event report through 2016 showed that 61 patients watching lawsuit ads about their prescribed anticoagulants stopped taking their medication, leading to 4 deaths and several other serious injuries. National patient advocacy organizations such as the Alliance for Aging Research have asserted that the 1-800-BAD-DRUG ads are deceptive under the FTCs' truth-in-advertising rules. How can the FTC enforce laws under its jurisdiction to deter deceptive practices that are documented by the FDA as leading to severe injury and death?

7. An April 2018 New York Times article uncovered a network of lawyers, doctors, and financers who preyed on women who had surgical mesh implants intended to treat pelvic organ prolapse. The scheme described in the article included coaxing women into getting surgery to remove the mesh—in some instances unnecessarily—to make them "more lucrative plaintiffs in lawsuits against medical device manufacturers." The article describes that one of the tactics used to get women into this lawsuit pipeline was by using online video ads. The article even shows one ad that uses the FDA logo and has a man in a doctor's outfit urging women to call the number. Isn't this exactly the type of deceptive, harmful advertising that the FTC should investigate? Would the FTC consider supporting regulatory guidelines for attorney advertisements to avoid this type of harm and deception?

8. In the online and digital marketplace, many of the largest companies both own the internet commerce platforms and also sell their own products. Small businesses hoping to compete are drawn to utilize this platform online while competing with their products. This can prove difficult when the large companies have continued access to online customer data that they can use to channel their own products. What is FTC doing to prevent monopoly and encourage free market principles when it comes to online data and sales?

9. Should privacy protections be based on the sensitivity of the information, or the entity collecting such information?

10. Should Congress allow California to dictate privacy protections for the entire country, or is the appropriate response from Congress to set the right national policy for the entire country? Are there any tools which Congress could provide that would make the FTC an even more effective enforcer of consumer privacy protections?

11. Recently, our committee sent a letter to Google about the fact that it continues to give third parties access to the content of Gmail users' emails. Does that practice by Google concern you? Is the FTC going to investigate this practice?

12. The FTC has been conducting a comprehensive review of the contact lens rule for the past several years. The review began in October of 2015 and to date has not been completed. In conducting this review, the FTC recommended several updates to the contact lens rule to educate and protect consumers. Specifically, the FTC recommended changes to the rule that help to educate consumers on their right to their prescription. Unfortunately, these common sense changes to the rule have not yet been finalized. This delay has caused uncertainty for consumers in the contact lens marketplace. Can you please provide me with an update on the status of the review of the rule and tell me when you expect this rule to be finalized?

The Honorable Mimi Walters

1. As you know, the Franchise Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. As the FTC reviews all rules every ten years, I understand the next review of the Franchise Rule is due at the end of 2018.

    a. In light of the Administration's focus on deregulation, what are the FTC's plans for the Franchise Rule?

    b. Does the FTC plan to reconsider the Franchise Rule?

    c. If so, when do you anticipate commencing a review and public comment process on the rule?

The Honorable Jeff Duncan

1. Has the Federal Trade Commission (FTC) undertaken any studies or made any determinations related to the ability of the Federal or state governments to regulate alcohol beverage sales in the online marketplace?

2. Does the FTC have specific jurisdiction and authority in which to regulate online marketplace platforms such as Craigslist, eBay, Facebook and others, in order to restrict or prohibit consumer to consumer sales of alcohol beverages that are facilitated through these platforms?

3. Is the FTC working with the Tobacco Tax and Trade Bureau (TTB) and any state attorneys general or Alcohol Beverage Commission (ABC) Boards to monitor and regulate online liquor sales for the benefit and protection of the consumer?

The Honorable Jan Schakowsky

1. I'm concerned that the FTC is unable to keep up with all the consent decrees. If the FTC cannot ensure compliance, the consent decrees are not effective in stopping unfair and deceptive acts.

    a. How many consent decrees are currently active?

b. How many FTC employees review them?

c. I understand that the Commission can request information from a company to ensure compliance with those consent decrees. With that many consent decrees, how does staff know what to ask for? How can you be sure the Commission is not missing violations?

d. I understand the FTC can require third-party monitoring reports. Are these full audits, and are these outside parties required to notify the FTC if they think a company is violating a consent decree?

e. How does the FTC evaluate third-party monitors/auditors? Can the FTC require that a particular auditor be used or not used?

f. When a consumer protection order is violated, what steps are taken to ensure that the violator is held accountable?

2. The Division of Privacy and Identity Protection, which oversees issues related to consumer privacy, data security, credit reporting, and identity theft, only has about 40 full-time employees. According to the Privacy Rights Clearinghouse, this year alone, there have been more than 240 data breaches involving more than 812 million records.

   a. How does the FTC determine which cases to bring or what investigations to open?

   b. On average, how many investigations are ongoing in the Division of Privacy and Identity Protection at any given time?

   c. On average, how many cases are ongoing at any given time?

   d. On average, how many attorneys work on each case or investigation?

   e. Does it sometimes happen that attorneys are pulled from an investigation or case they are working on to work on a bigger or more newsworthy investigation or case? If so, please describe under what circumstances this transfer of personnel might occur. How does the Commission decide which cases take priority?

   f. What other resources could the FTC, particularly in the areas of consumer privacy, data security, credit reporting, and identity theft?

   g. I am concerned about the push to close out cases. While a person should not be under investigation indefinitely, cases should not be closed just because staff are temporarily assigned other matters. Can you assure me that potential violators are not given a free pass because of this push to close out cases?

3. Is the FTC examining whether PBM mergers are driving up costs for consumers? With the understanding that the FTC cannot disclose nonpublic investigations, please explain what steps FTC will take, including but not limited to a retrospective review of past PBM mergers, to protect consumers and promote competition in the PBM industry.

4. At the hearing, I asked you whether the FTC could issue an advanced notice of proposed rulemaking (ANPR) or a notice of inquiry to collect data and get the process started on a data security rule. At the time you responded that the FTC "could certainly start a rulemaking under Mag-Moss," with the caveat that it could be time consuming and resource intensive. Regardless of whether Congress passes a law, is the FTC considering issuing an ANPR or notice of inquiry, or other pre-rulemaking efforts on data security right now? Why or why not? What are the benefits to doing this?

5. In August 2003, former Chairman Timothy Muris stated, "Sometimes robust competition alone will not punish or deter seller dishonesty." He cited as an example "credence goods," which are products for which "consumers cannot readily use their own experiences to assess whether the seller's quality claims are true." He noted that for such goods "the market may not identify and discipline a deceptive seller because the product's qualities are so difficult to measure."

    a. Do you agree or disagree with Chairman Muris's statement? Why or why not?

    b. What are examples of credence goods that fall within the FTC's jurisdiction?

        i. Has the FTC taken law enforcement action against marketers of credence goods?

        ii. What type of monetary relief, if any, did the FTC obtain in these cases?

    c. In addition to credence goods, are there any other products, services, or industries under FTC's jurisdiction for which robust competition alone will not punish or deter seller dishonesty?

6. You testified that in cases involving fraud, the FTC's existing Section 5 authority, which includes ancillary relief such as restitution and disgorgement "probably is sufficient." However, many of FTC's fraud cases allege both violations of Section 5 as well violations of a regulation. Allegations of violations of a regulation, of course, allow the FTC to pursue civil penalties in those Section 5 for which the Commission would not otherwise be able to pursue.

    a. What are some examples of fraud cases not involving a violation of a regulation for which civil penalties would be helpful, such as online giving portal scams?

    b. What are some examples of non-fraud cases for which civil penalties would be helpful, such as cases involving vaping products marketed to teens?

The Honorable Doris Matsui

1. Patients in my district are very concerned about the skyrocketing prices of prescription drugs. One way that we can keep drug prices lower is by ensuring competition in the marketplace and encouraging the entry of generic drugs. Brand-name drug-makers are incentivized to delay the entry of generic competition to their products, because the longer they have a monopoly, the longer they can charge higher prices. Therefore, some brand-name drug makers have found ways to extend the time that their drug is the only one on the market. One such scheme includes buying off generic drugs with "pay-for-delay" agreements – where the brand-name drug maker pays the generic drug manufacturer to stay off the market longer.

    a. What is the Commission doing to review or prevent "pay-for-delay" agreements due to their anti-competitive nature?

    b. Is the Commission reviewing other similar anti-competitive behaviors in the drug manufacturer space? Can the Commission commit to remaining active in this area?

2. One core function of the Commission's mission is to protect consumers from scams. With the continued growth of online commerce, there has been an increase in online booking scams that potentially mislead consumers using fraudulent websites.

    a. What further attention do you believe the Commission should be giving to this and similar issues as part of the Commission's overall effort to prevent online scams?