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Office of the Chair

Testimony of Chair Lina M. Khan
Before the House Appropriations Subcommittee on
Financial Services and General Government

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I. INTRODUCTION

Chairman Quigley, Ranking Member Womack, and members of the Subcommittee, thank you for inviting me to testify today.[1] My testimony will address the Commission's FY 2023 budget request, spotlight the important work the Federal Trade Commission is doing to ensure open, competitive, and fair markets on behalf of consumers, workers, and honest businesses, and highlight some of the challenges before us.

The FTC is at the front lines of many of the most pressing issues Americans face today—from corporate mergers that can enable firms to hike prices and slash wages, to massive data breaches that can expose Americans' most sensitive and personal information. The FTC is charged with tackling unfair or deceptive practices—be it businesses who lie about products being Made in America, fraudsters who peddle fake COVID cures, or firms who abuse consumer data—and we're responsible for rooting out unfair methods of competition that can crush entrepreneurs and stifle innovation. Our jurisdiction spans the entirety of the U.S. economy, and

[1] This written testimony reflects my own views. The oral statement and responses to questions are also my own and do not necessarily reflect the views of the Commission or any other Commissioner.

Congress has assigned us the task of enforcing or administering provisions across over 80 statutes.[2]

Given the urgent problems facing Americans, we are aggressively using the full set of tools and authorities that Congress has granted us. While I continue to be impressed by the tenacity and creativity of our staff in the face of an ever-increasing workload, defendants with seemingly endless resources, and legal challenges to our authority, there is much more we need to do. A key prerequisite is additional resources, which is why the Commission has requested $490 million in FY 2023. I am confident that this level of increase would enable us to more fully and effectively deliver on our mission.

Indeed, funding increases that Congress provided the FTC in recent years have contributed to key achievements. This critical support has helped us continue our far-reaching work to protect Americans, particularly in the wake of an ongoing pandemic and a historic merger wave. I commend the talented FTC staff for the skill and dedication with which they have diligently advanced the agency's mission, despite these challenges.

I take seriously the importance of ensuring that agency funds are put to the most effective use. Accordingly, I have asked staff to orient our enforcement efforts around targeting and rectifying root causes to avoid a whack-a-mole approach that imposes significant enforcement burden with few long-term benefits. We are also ensuring that our work is tackling the most significant harm across markets, particularly by dominant firms whose business practices affect

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[2] *Legal Library: Statutes*, FED. TRADE COMM'N, https://www ftc.gov/legal-library/browse/statutes (last visited May 15, 2022).

huge swaths of Americans. Lastly, we are focused on the need to be forward-looking in anticipating problems and taking swift action, especially as it concerns next-generation technologies and nascent markets across sectors. Orienting our work around these principles can help maximize our efficacy.

I. BUDGET AND RESOURCES

Currently, the FTC has around 1,200 employees. The FTC's full-time employee headcount fell in 2017 and 2018, and the total headcount today remains about two-thirds of what it was at the beginning of 1980.[3] Meanwhile, the scope of investigation and litigation discovery has expanded exponentially over recent decades, with voluminous electronic submissions demanding substantial staff resources. Merger-filing fees have also failed to keep pace with the exponential increases in dollar volume of each filing. Instead, per-transaction filing fees have stagnated for 20 years, even as the economy and the size of the deals have ballooned.[4] Recent trends—with a historic surge in merger filings[5] and spikes in reported consumer fraud[6]—have only underscored both the importance of our work and the critical need for additional resources.

The FTC's enacted budget for FY 2022 is $376.5 million, which will fund 1,225 FTEs. For FY 2023, the FTC is requesting $490.0 million and 1,440 FTEs. This request to increase our

[3] *FTC Appropriation and Full-Time Equivalent (FTE) History*, FED. TRADE COMM'N, https://www ftc.gov/about-ftc/bureaus-offices/office-executive-director/financial-management-office/ftc-appropriation (showing 1719 FTE in 1980 and 1123 FTE in 2021) (last visited May 17, 2022).
[4] *Id*.
[5] In fiscal year 2021, the FTC and DOJ received notice of 3,520 transactions. This represents a 66% increase over the 10-year high.
[6] Over the past five years, annual consumer complaints we receive has increased from 2.9 to 5.7 million. Consumer fraud reports alone increased from 1.3 to 2.8 million and reported consumer fraud losses exploded from $1.1 billion in 2017 to over $5 billion in 2021.

budget by $113.5 million will fund an additional 215 FTEs and enable us to address in part the increased demand on agency staff and resources. During FY 2022, we plan to grow by approximately 85 FTEs, taking us from 1,140 FTEs to 1,225. This will cover approximately 28% of the 300 FTEs requested in our FY 2023 budget request. That will leave approximately 215 FTEs to hire, or growth of approximately 18% over our FY 2022 FTE level of 1,225. For FY 2023, we plan to deploy existing hiring strategies to build on the growth started in FY 2022 to recruit any additional FTEs the agency may receive in the FY 2023 budget.

This budget request leverages the agency's existing Regional Office structure to expand the agency's candidate pool and community presence, promote the expansion of telework, and implement a nimbler workforce that will work seamlessly on both consumer protection and competition matters. Fully executing on our mission requires that our analytical capabilities keep up with changing market realities, and this budget request accordingly seeks to better position us to recruit a range of experts, including financial analysts, technologists, and others. These skills will allow us to continue building in-house expertise, supporting our ability to conduct market-wide inquiries and scrutinize emerging business practices.

The FY 2023 budget request also funds additional expert witness levels commensurate with the additional FTE levels, given our need to support expert work in litigation, particularly in cases against large, well-financed defendants.

Additionally, the FTC seeks additional resources for systems modernization and infrastructure upgrades to support a larger decentralized workforce. The FTC requests funding to support the necessary equipment and overhead for the additional FTEs and to modernize applications that directly support our mission, like the comprehensive complaint database known as the Consumer Sentinel Network, which is accessible to law enforcement agencies across the country and internationally.

The FTC's budget request would be offset by fees collected from HSR filings. When possible, the agency collects money to return to harmed consumers. During FY 2021, the FTC returned $607 million in nonentity collections to consumers and the U.S. Treasury General Fund. Redress disbursements to harmed consumers during FY 2021 totaled $453 million,[7] with an additional $8 million in disgorgements to Treasury. Civil penalty collections returned to Treasury totaled $146 million.

Throughout FY 2021, the FTC saved consumers an estimated $2.4 billion through its merger and nonmerger competition law enforcement actions and an estimated $1.5 billion through its consumer protection law enforcement actions.[8] For FY 2021, every $1 of the FTC's cost returned an estimated $36 in FTC-provided benefits to consumers. I expect that a larger budget would position us to further improve on this already impressive return on investment.

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[7] All of the redress disbursements in FY 2021 were from cases that were resolved prior to the Supreme Court's April 2021 decision in *AMG Capital Management, LLC. v. FTC*, 141 S. Ct. 1341 (2021), which invalidated the Commission's ability to obtain refunds for consumers under Section 13(b) of the FTC Act. Once the Commission completes distribution of funds obtained in cases resolved prior to *AMG*, future Commission distributions will decrease due to the loss of the ability to obtain monetary relief under Section 13(b).

[8] These estimates were calculated based on performance measures 1.1.3 (consumer savings from consumer protection law enforcement), 2.1.3 (consumer savings from merger enforcement), and 2.1.5 (consumer savings from non-merger enforcement). For more details on measurement and data quality, see the *FTC Data Quality Appendix*, FED. TRADE COMM'N, https://www ftc.gov/reports/2018-2022-performance-data-quality-appendix (last visited May 12, 2022).

II. COMPETITION MISSION

Robust enforcement of the antitrust laws delivers enormous benefits for the American public. Law enforcement to block unlawful mergers or halt unfair methods of competition can contribute to lower prices and higher wages, while preserving quality and access. Strong enforcement can also promote entrepreneurship and new business growth, enabling start-ups and small businesses the opportunity to compete on the merits.

Over recent years, empirical research has shown that significant consolidation has undermined fair, open, and competitive markets, enabling firms to hike prices and lower wages, while also sapping investment, reducing innovation, and undermining entrepreneurship and new business formation.[9] Recent events have also underscored the ways in which a lack of competition can render our supply chains more brittle, leaving us less resilient in the face of shocks,[10] and the Department of Defense has recently stated that a lack of competition in the defense industrial base poses a threat to national security.[11] Robust antitrust enforcement is especially critical against this backdrop.

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[9] See, e.g., José A. Azar et al., *Concentration in US Labor Markets* 13 (Nat'l Bureau of Econ. Res., Working Paper No. 24395, 2018); Simcha Barkai, *Declining Labor and Capital Shares*, 75 J. FIN. 2421, 2422-45, 48 (2020); Jan De Loecker et al., *The Rise of Market Power and the Macroeconomic Implications*, 135 Q.J. ECON. 561, 644 (2020); Germán Gutiérrez & Thomas Philippon, *Investmentless Growth: An Empirical Investigation*, BROOKINGS PAPER ON ECON. ACTIVITY 89, 95–97 (2017); *see also* IAN HATHAWAY & ROBERT E. LITAN, WHAT'S DRIVING THE DECLINE IN THE FIRM FORMATION RATE? A PARTIAL EXPLANATION (Nov. 2014).

[10] Ben Popken, *In Struggle to Fix Supply Chain, Small Businesses Fear Losing Out to Larger Companies With More Spending Power*, NBC NEWS (Oct. 13, 2021), https://www nbcnews.com/business/consumer/struggle-fix-supply-chain-small-businesses-fear-losing-out-larger-n1281467; Kerem Inal, *Supply Chain Problems Forcing Small Businesses to Change How They Operate*, ABC NEWS (Oct. 24, 2021), https://abcnews.go.com/Business/supply-chain-problems-forcing-small-businesses-change-operate/story?id=80713564; Jane Callen, *U.S. Small Businesses Suffer Supply Chain Disruptions*, U.S. CENSUS BUR. (Aug. 9, 2021), https://www.census.gov/library/stories/2021/08/united-states-small-businesses-suffer-supply-chain-disruptions.html.

[11] DEP'T OF DEFENSE, OFF. OF THE UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT, STATE OF COMPETITION WITHIN THE DEFENSE INDUSTRIAL BASE, at 2 (Feb. 2022) [hereinafter "DEP'T OF DEFENSE COMPETITION REPORT"].

A. Merger Enforcement

One of the FTC's principal responsibilities is to enforce the law against mergers that may substantially lessen competition or tend to create a monopoly. As the front-line defense against unlawful consolidation, merger enforcement is critically important. Robust enforcement can also serve as a highly cost-effective tool to guard against market structures that facilitate illegal conduct such as tacit coordination and monopolization.

Under the Hart-Scott-Rodino Act, businesses proposing certain mergers and acquisitions must make a premerger notification filing with the federal antitrust agencies and comply with the statutory waiting period before completing their transactions.[12] After the number of reported transactions fell for fiscal year 2020, which also covered much of the first year of the COVID-19 pandemic,[13] global deal-making in 2021 soared to $5.8 trillion, the highest level ever recorded.[14] An astounding 3,644 transactions were reported to the FTC and DOJ in FY 2021, a figure that is 87% higher than the average number of transactions reported over the past five years.[15]

I am grateful to Congress for providing increased funding to the FTC over the past two

[12] I believe that the waiting period under the Act—a short 30-day window that the agencies are given to decide whether a deal warrants closer investigation—is ripe for revisiting by Congress. Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter Regarding the FY 2020 Hart-Scott-Rodino Annual Report for Transmittal to Congress, at 2 (Nov. 8, 2021), https://www ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-joined-commissioner-rebecca-kelly-slaughter-regarding-fy-2020-hart-scott.

[13] FED TRADE COMM'N & DEP'T OF JUST., HART-SCOTT-RODINO ANNUAL REP., FISCAL YEAR, at 1-2 (2021), https://www.ftc.gov/system/files/documents/reports/hart-scott-rodino-annual-report-fiscal-year-2020/fy2020_-_hsr_annual_report_-_final.pdf.

[14] Kaye Wiggins et al., *Dealmaking Surges Past $5.8tn to Highest Levels on Record,* FIN. TIMES (Dec. 30, 2021), https://www.ft.com/content/6dfdd78a-e229-4524-a400-144396524eb6.

[15] FTC & DEP'T OF JUSTICE, HART-SCOTT-RODINO ANNUAL REP. FISCAL YEAR 2020, Exh. A, Tbl. I, Tbl. IV (2021).

fiscal years, and our staff has worked tirelessly to meet the enormous demand of enforcing the laws against unlawful mergers amid a historic surge. Yet it remains extremely challenging to fully resource the FTC's competition mission, especially merger investigations,[16] and our FTE count is well below what is needed to fully deliver.[17] Indeed, many mergers require resource-intensive investigations potentially involving tens of thousands of documents and massive volumes of data. The combination of the merger boom, inadequate resources, and strict deadlines under HSR has resulted in thinly stretched staff and concerning deals getting a more cursory review than they warrant. While we endeavor to investigate fully deals that may be unlawful, these circumstances have forced difficult choices about how to handle situations where a proposed merger appears to raise legal concerns but we lack the resources to fully investigate it within the statutory timeframe.

Nonetheless, we have harnessed our resources to great success, blocking transactions we identified as unlawful. For example, in December 2021 the FTC sued to block U.S. chip supplier Nvidia Corp.'s $40 billion acquisition of U.K. chip design provider Arm Ltd.[18] The proposed merger would have given one of the largest chip companies control over its rivals' designs for competing chips. The FTC's complaint alleged that the combined firm would have the means and incentive to stifle next-generation technologies, including those used to run datacenters and driver-assistance systems in cars. More than two months into its litigation with the FTC, Nvidia

[16] Nearly 70 percent of full-time employees in the Bureau of Competition, as well as many competition attorneys in the regional offices and elsewhere at the agency, focused on mergers in FY 2021.
[17] FTC Chair Lina M. Khan & Comm'r Rebecca Kelly Slaughter, Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter Regarding the FY 2020 Hart-Scott-Rodino Annual Report for Transmittal to Congress (Nov. 8, 2021), https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-joined-commissioner-rebecca-kelly-slaughter-regarding-fy-2020-hart-scott.
[18] Press Release, Fed. Trade Comm'n, FTC Sues to Block $40 Billion Semiconductor Chip Merger (Dec. 2, 2021), https://www ftc.gov/news-events/news/press-releases/2021/12/ftc-sues-block-40-billion-semiconductor-chip-merger.

abandoned its acquisition of Arm—representing the first abandonment of a litigated vertical merger in many years. The termination of what would have been the largest semiconductor merger ever preserved competition for key technologies and safeguarded future innovation. The FTC team, cooperating with competition agencies in the European Union, United Kingdom, Japan, and South Korea, did outstanding work on the investigation and litigation.

Our recent merger enforcement work has also protected competition in the defense industry. For example, in February 2022, the Commission filed a complaint to block the Lockheed/Aerojet defense merger, a $4.4 billion transaction that would have eliminated the country's last independent supplier of key missile propulsion inputs and given Lockheed the ability to cut off its competitors' access to these critical components.[19] The FTC's investigation, conducted in close collaboration with the Department of Defense, determined that the deal would have resulted in higher prices and diminished quality and innovation for programs critical to our national security. The Defense Department also recently stated that high consolidation within the defense industrial base poses a risk to national defense and has identified strong merger enforcement as a key tool for promoting greater competition.[20]

We also continue to vigorously enforce the law against unlawful hospital consolidation. Most recently, the Commission in February 2022 voted unanimously to file, together with the state of Rhode Island, a complaint to block the merger of Lifespan Corporation and Care New England Health System, Rhode Island's two largest healthcare providers, alleging the deal would

[19] Statement Regarding Termination of Lockheed Martin Corporation's Attempted Acquisition of Aerojet Rocketdyne Holdings Inc. (Feb. 15, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/statement-regarding-termination-lockheed-martin-corporations-attempted-acquisition-aerojet.
[20] *See* DEP'T OF DEFENSE COMPETITION REPORT, *supra* note 11, at 4.

lead to higher prices and lower quality care.[21] Days after we filed the complaint, the parties abandoned the transaction.

a. Key Initiatives to Strengthen Our Merger Enforcement Tools

In addition to enforcing the law against unlawful mergers, the FTC is considering how we can better harness our tools to check unlawful deals. This includes a joint FTC-DOJ review of our primary enforcement manual, the merger guidelines, as well as an effort to modernize the information we collect about notified deals.

In January, together with the Department of Justice, we began the process of revising our merger guidelines.[22] This key enforcement manual is heavily relied upon by judges adjudicating merger challenges, by our staff in reviewing proposed mergers, and by private parties that represent merging parties. My goal is to ensure that our guidelines accurately reflect contemporary commercial realities, are faithful to our statutory mandate, and are administrable and predictable.

A second initiative designed to improve the agency's overall effectiveness in merger review is a revision of the merger notification form ("HSR form"), through a top-to-bottom review of the information we currently receive and an assessment of the additional information

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[21] Press Release, Fed. Trade Comm'n, FTC and Rhode Island Attorney General Step in to Block Merger of Rhode Island's Two Largest Healthcare Providers (Feb. 17, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-rhode-island-attorney-general-step-block-merger-rhode-islands-two-largest-healthcare-providers.

[22] Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan. 18, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers.

we need to effectively and efficiently identify transactions that need in-depth investigation. My goal is to introduce a new form that will collect upfront probative information about the merger, reducing the time and resources that agency staff has to spend processing the filings and screening them for potential illegal deals. I believe that the revised HSR form will streamline the entire merger review process and provide greater certainty to parties contemplating transactions.

B. Enforcement Against Anticompetitive Conduct

The FTC continues to maintain and develop a robust program to identify and stop anticompetitive conduct outside of the merger contexts. In January 2020, the FTC and the New York Attorney General Letitia James sued "Pharma Bro" Martin Shkreli, his company, Vyera Pharmaceuticals, and others alleging that the company and its leaders raised the price of a life-saving drug by more than 4000%, and then engaged in unlawful conduct to maintain that revenue.[23] In January 2022, the U.S. District Court held Shkreli liable for antitrust claims brought by the FTC and seven state enforcers. Finding that Shkreli's conduct was egregious, deliberate, repetitive, long-running, and ultimately dangerous, the Court imposed a lifetime ban on Shkreli from participating in the pharmaceutical industry and found him liable for $64.6 million in disgorgement.[24] The U.S. District Court's decision to ban Shkreli for life from the pharmaceutical industry is a victory for Americans and should signal to corporate executives that

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[23] Press Release, Fed. Trade Comm'n, FTC and NY Attorney General Charge Vyera Pharmaceuticals, Martin Shkreli, and Other Defendants with Anticompetitive Scheme to Protect a List-Price Increase of More than 4,000 Percent for Life-Saving Drug Daraprim (Jan. 27, 2020), https://www ftc.gov/news-events/news/press-releases/2020/01/ftc-ny-attorney-general-charge-vyera-pharmaceuticals-martin-shkreli-other-defendants-anticompetitive.

[24] Statement of Chair Lina M. Khan on the Ruling by Judge Denise L. Cote Federal Trade Commission et al. v. Vyera Pharms., LLC et al. (Jan. 14, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/statement-chair-lina-m-khan-ruling-judge-denise-l-cote-federal-trade-commission-et-al-v-vyera.

they may be held personally liable for antitrust violations that they direct.

Last year, the Commission also successfully amended its complaint against Facebook (d/b/a/ Meta) in a lawsuit that, in addition to other forms of relief, seeks the divestment of Instagram and Whatsapp. The amended complaint alleges that after repeated failed attempts to develop innovative mobile features for its network, Facebook instead resorted to an illegal buy-or-bury scheme to maintain its dominance. [25] According to the complaint, the company unlawfully acquired innovative competitors with popular mobile features that succeeded where Facebook's own offerings failed. To further protect its monopoly, Facebook allegedly lured app developers to the platform, surveilled them for indications of success, and then squashed those that were positioned to become competitive threats.[26] In January of this year, D.C. District Judge James E. Boasberg denied Facebook's motion to dismiss the FTC's case, which allows the Commission's antitrust lawsuit to continue.

III. CONSUMER PROTECTION MISSION

As Americans struggle with the economic precarity caused by the pandemic and rising prices for essential goods, scammers and unscrupulous businesses have found new ways to exploit them. Indeed, over the past few years, the Commission has seen a soaring number of

[25] Press Release, Fed. Trade Comm'n, FTC Alleges Facebook Resorted to Illegal Buy-or-Bury Scheme to Crush Competition After String of Failed Attempts to Innovate (Aug. 19, 2021), https://www ftc.gov/news-events/news/press-releases/2021/08/ftc-alleges-facebook-resorted-illegal-buy-or-bury-scheme-crush-competition-after-string-failed.
[26] *Id.*

reports about business imposters,[27] substantial losses stemming from online shopping and undelivered merchandise,[28] a rising number of cryptocurrency[29] and other income scams,[30] work-from-home scams, fake check scams, and deceptive online trading offers.[31] Between 2019 and 2021, the number of consumer reports has increased by over 67 percent, from 3.4 million reports in 2019 to 5.7 million reports in 2021.[32]

Our analyses also show that digital platforms have become fertile ground for fraud and abuse. More than one in four people who reported losing money to a scam in 2021 said that the scam started with a contact on social media.[33] What's more, the number of reports has increased nineteen-fold since 2017, with reported losses of about $770 million in 2021.[34] This is no accident. The opaque algorithms that social media platforms use to promote engagement, and the vast reams of data they have on users, arm scammers with potent tools to target consumers with harmful content. And while platforms may take this content down when it is flagged, this is often after it has already spread far and wide.

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[27] Emma Fletcher, *Amazon Tops List of Impersonated Businesses,* FTC CONSUMER PROTECTION DATA SPOTLIGHT (Oct. 20, 2021), https://www ftc.gov/news-events/data-visualizations/data-spotlight/2021/10/amazon-tops-list-impersonated-businesses.

[28] Emma Fletcher, *Pandemic Purchases Lead to Record Reports of Unreceived Goods*, FTC CONSUMER PROTECTION DATA SPOTLIGHT (July 1, 2020), https://www ftc.gov/news-events/data-visualizations/data-spotlight/2020/07/pandemic-purchases-lead-record-reports-unreceived-goods.

[29] Emma Fletcher, *Cryptocurrency Buzz Drives Record Investment Scam Losses*, FTC CONSUMER PROTECTION DATA SPOTLIGHT (May 17, 2021), https://www ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses.

[30] *Consumer Sentinel Network*, FED. TRADE COMM'N, https://www.ftc.gov/enforcement/consumer-sentinel-network (noting that income scams increased in 2021 over 2020 and were driven by investment and job scams) (last visited May 16, 2022).

[31] Emma Fletcher, *Income Scams: Big Promises, Big Losses*, FTC CONSUMER PROTECTION DATA SPOTLIGHT (Dec. 10, 2020), https://www ftc.gov/news-events/blogs/data-spotlight/2020/12/income-scams-big-promises-big-losses.

[32] The increase is due in part to the addition of new data contributors, such as the Social Security Administration Office of Inspector General and the Australian Competition and Consumer Commission.

[33] Emma Fletcher, *Social Media a Gold Mine for Scammers in 2021*, FTC CONSUMER PROTECTION DATA SPOTLIGHT (Jan. 25, 2022), https://www.ftc.gov/news-events/blogs/data-spotlight/2022/01/social-media-gold-mine-scammers-2021.

[34] *Id.*

Fraud is not the only challenge stemming from the increased digitization. We've seen how security vulnerabilities can have sweeping effects, disrupting fuel supply for an entire segment of the country and halting meat processing operations nationwide.[35] We've also seen how privacy breaches can be materially consequential, with violations exposing millions of children during the course of doing their schoolwork, or resulting in the purchase and sale of individuals' sensitive health data.[36] And, greater adoption of workplace surveillance technologies and facial recognition tools is expanding data collection in newly invasive and potentially discriminatory ways.[37]

To respond to these trends, the Commission is not only challenging individual illegal activity but also taking comprehensive action to deter and disrupt practices across industries that harm consumers. My goal is to tackle these problems broadly, casting a wide net to stop illegal conduct that causes massive consumer harm. The agency also engages in data analysis to spot and respond to emerging threats and consumer education to augment our law enforcement

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[35] *See, e.g.*, Collin Eaton & Amrith Ramkumar, *Colonial Pipeline Shutdown: Is There a Gas Shortage and When Will the Pipeline Be Fixed?*, WALL ST. J. (May 13, 2021), https://www.wsj.com/articles/colonial-pipeline-cyberattack-hack-11620668583; Fabiana Batista et al., *All of JBS's U.S. Beef Plants Were Forced Shut by Cyberattack*, BLOOMBERG (May 31, 2021), https://www.bloomberg.com/news/articles/2021-05-31/meat-is-latest-cyber-victim-as-hackers-hit-top-supplier-jbs.

[36] *See, e.g.*, Joe Heim, *Computer Hackers Attack Fairfax County School System*, WASH. POST (Sept. 11, 2020), https://www.washingtonpost.com/local/education/computer-hackers-attack-fairfax-county-school-system/2020/09/11/5a944d32-f474-11ea-999c-67ff7bf6a9d2_story.html; DEP'T OF HEALTH AND HUMAN SERVS., OFFICE FOR CIVIL RIGHTS, BREACH PORTAL: NOTICE TO THE SECRETARY OF HHS BREACH OF UNSECURED PROTECTED HEALTH INFORMATION, CASES CURRENTLY UNDER INVESTIGATION, https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf (last visited Apr. 27, 2022).

[37] Kathryn Zickuhr, *Workplace Surveillance is Becoming the New Normal for U.S. Workers*, WASH. CTR. FOR EQ. GROWTH (Aug. 18, 2021), https://equitablegrowth.org/research-paper/workplace-surveillance-is-becoming-the-new-normal-for-u-s-workers/; Aaron Rieke & Miranda Bogen, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias*, UPTURN (Dec. 10, 2018), https://www.upturn.org/work/help-wanted/; NAT'L INST. OF STANDARDS AND TECH., TOWARDS A STANDARD FOR IDENTIFYING AND MANAGING BIAS IN ARTIFICIAL INTELLIGENCE (2022), https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1270.pdf (NIST Special Pub. 1270).

efforts. In the past year, the Commission has focused its efforts on digital harms, COVID and other fraud, and ensuring that workers and small businesses aren't cheated. And, despite the major setback to the Commission's ability to recover equitable monetary remedies from the Supreme Court's decision in *AMG*,[38] the agency has deployed new tools and reinvigorated old ones to get money back to consumers where possible.

A. Protecting Against Digital Harms

The Commission is taking a comprehensive approach to curbing and deterring unlawful data practices, including conduct that harms user privacy or data security. First, we are directing our limited resources to areas where we can have a market-wide impact. For example, last year the Commission finalized amendments to the Safeguards Rule, which requires non-bank financial firms across the economy to ensure they are protecting consumers' sensitive information.[39] In addition, the Commission issued a policy statement affirming that health apps and connected devices that collect or use consumers' health information must comply with the FTC's Health Breach Notification Rule.[40] Our enforcement actions also reflect a commitment to widespread impact. For example, last year, the Commission took action against OpenX—a major advertising platform charged with illegally collecting information from children across hundreds of apps, and with collecting geolocation information without consumers' consent. The

[38] *AMG Capital Management, LLC. v. FTC*, 141 S. Ct. 1341 (2021).
[39] Press Release, Fed. Trade Comm'n, FTC Strengthens Security Safeguards for Consumer Financial Information Following Widespread Data Breaches (Oct. 27, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-strengthens-security-safeguards-consumer-financial-information-following-widespread-data.
[40] FTC, Statement of the Commission on Breaches by Health Apps and Other Connected Devices (Sept. 15, 2021), https://www.ftc.gov/legal-library/browse/statement-commission-breaches-health-apps-other-connected-devices [hereinafter Statement on Breaches by Health Apps]. *See also* FTC, Mobile Health App Developers: FTC Best Practices (Apr. 2016), https://www.ftc.gov/business-guidance/resources/mobile-health-app-developers-ftc-best-practices (FTC business guidance).

Commission obtained an order requiring OpenX to halt its violations, delete its ad request data, and pay a civil penalty of $2 million.[41]

Second, we are pursuing an interdisciplinary approach to combatting digital harms, assessing data practices through both a consumer protection and competition lens. Given the intersecting ways in which widescale data collection and commercial surveillance practices can facilitate violations of both consumer protection and antitrust laws, we are using our experience and expertise in both areas to ensure we understand the full implications of business conduct and strategies. We are also increasing our use of technologists alongside the skilled lawyers, economists, and investigators who lead our enforcement work. We have already increased the number of technologists on our staff—drawing from diverse skillsets, including data scientists and engineers, user design experts, and AI researchers—and we plan to continue building up this team.

Third, we are focusing on designing effective remedies for law violations that address the business incentives that drive firms to engage in these unlawful practices. This includes pursuing relief that will fully cure the harm caused by these practices and reverse the incentives to break the law. For example, the Commission recently took action against a Weight Watchers subsidiary, Kurbo, alleging that the company illegally collected children's sensitive personal information, including their names, eating habits, daily activities, weight, birth date, and

[41] Press Release, Fed. Trade Comm'n, Advertising Platform OpenX Will Pay $2 Million for Collecting Personal Information from Children in Violation of Children's Privacy Law (Dec. 15, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/12/advertising-platform-openx-will-pay-2-million-collecting-personal-information-children-violation.

persistent identifiers.[42] Our order required not only that the business pay a penalty, but also that it delete its ill-gotten data where parents did not consent to the collection, and that it destroy any algorithms derived from that data.[43] Also, where appropriate, our remedies force executive accountability through limits on executives' conduct. In our action against SpyFone, for example, the FTC banned both the company and its CEO from the surveillance business, resolving allegations that they sold software that allowed a purchaser to surreptitiously monitor another person's phone, which enabled secret real-time access to data on a range of sensitive activity.[44] Lastly, we are committed to evolving our remedies to reflect the latest best practices in security and privacy. For example, in our recent action against CafePress, our settlement remedied an alleged breach by requiring the use of multi-factor authentication that uses a secure authentication protocol—reflecting the latest thinking in secure credentialing.[45]

The Commission is also cracking down on dark patterns that fuel digital deception. We have seen how some marketers use dark patterns to trick consumers into incurring unwanted charges or subscriptions during online transactions.[46] Last year, we held a workshop to examine these practices, and shortly thereafter issued a Policy Statement making clear that these tricks

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[42] Press Release, Fed. Trade Comm'n, FTC Takes Action Against Company Formerly Known as Weight Watchers for Illegally Collecting Kids' Sensitive Health Data (Mar. 4, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-company-formerly-known-weight-watchers-illegally-collecting-kids-sensitive.

[43] Stipulated Order, *United States v. Kurbo Inc*. (N.D. Cal. 2022) (No. 3:22-cv-00946), https://www.ftc.gov/system/files/ftc_gov/pdf/wwkurbostipulatedorder.pdf.

[44] Press Release, Fed. Trade Comm'n, FTC Bans SpyFone and CEO from Surveillance Business and Orders Company to Delete All Secretly Stolen Data (Sept. 1, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/09/ftc-bans-spyfone-ceo-surveillance-business-orders-company-delete-all-secretly-stolen-data.

[45] Press Release, Fed. Trade Comm'n, FTC Takes Action Against CafePress for Data Breach Cover Up (Mar. 15, 2022), https://www ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover.

[46] *See* Press Release, Fed. Trade Comm'n, Children's Online Learning Program ABCmouse to Pay $10 Million to Settle FTC Charges of Illegal Marketing and Billing Practices (Sept. 2, 2020), https://www.ftc.gov/news-events/press-releases/2020/09/childrens-online-learning-program-abcmouse-pay-10-million-settle.

and traps were against the law, and that cancelling a subscription service should be no more difficult than signing up.[47] The Commission also authorized an omnibus resolution making it easier for our staff to investigate these harmful practices.

Finally, to further understand and shed light on social media practices, in December 2020, the Commission issued orders to nine social media and video streaming companies including Facebook, Inc. (now Meta Platforms, Inc.), YouTube LLC, and ByteDance Ltd, which is the parent company of TikTok. These Orders cover a broad range of social media practices, including how these companies collect and use personal information, their advertising and user engagement practices, and how their practices affect children and teens. The FTC is committed to tackling emerging threats, adjusting our strategies wherever necessary, and working in close coordination with our law enforcement partners at the local, state, and federal level.

B. Protecting Honest Businesses and Workers

As American workers and small businesses attempt to recover from the effects of the pandemic, the Commission is taking a comprehensive approach—through enforcement, rulemaking, and advocacy—to ensuring that they are not held back by unfair or deceptive practices.

[47] *See* Press Release, Fed. Trade Comm'n, FTC to Ramp up Enforcement against Illegal Dark Patterns that Trick or Trap Consumers into Subscriptions (Oct. 28, 2021), https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions.

First, the Commission is taking aggressive enforcement action to hold accountable those who exploit small businesses and gig workers. In January, we banned Richmond Capital, a financing entity that allegedly preyed on small businesses, from the merchant cash advance and debt collection industry.[48] Later that month, we required Dun and Bradstreet—the nation's largest provider of small business credit reports—to reform how it treated small businesses, including by giving them new tools to correct inaccuracies on their reports.[49] In March, the Commission filed an administrative complaint charging the gig platform HomeAdvisor with making false, misleading, or unsubstantiated claims about the quality and source of the leads the company sells to service providers, such as general contractors and small lawn care businesses, who are in search of potential customers. And since November 2021, the FTC has sent more than $60 million to 141,000 Amazon Flex drivers who allegedly had their tips deceptively withheld.[50]

The Commission has also revived enforcement of its Franchise Rule, which is designed to protect franchisees from unscrupulous practices. In February, we partnered with DOJ to file a suit against fast-food chain Burgerim, alleging that the chain made false promises and withheld information required by the Franchise Rule to persuade more than 1,500 consumers, many of

[48] Press Release, Fed. Trade Comm'n, Merchant Cash Advance Providers Banned from Industry, Ordered to Redress Small Businesses (Jan. 5, 2022), https://www ftc.gov/news-events/news/press-releases/2022/01/merchant-cash-advance-providers-banned-industry-ordered-redress-small-businesses.
[49] Press Release, Fed. Trade Comm'n, In Response to FTC Charges, Dun & Bradstreet to Clean Up Small Business Credit Reporting Process and Refund Customers (Jan. 13, 2022), https://www ftc.gov/news-events/news/press-releases/2022/01/response-ftc-charges-dun-bradstreet-clean-small-business-credit-reporting-process-refund-customers.
[50] Order, *In re Amazon.com, Inc.* (F.T.C. 2021) (No. C-4746), https://www ftc.gov/system/files/documents/cases/1923123c4746amazonflexorder1.pdf (requiring Amazon to return all of the money it withheld from drivers). *See also* Press Release, Fed. Trade Comm'n, FTC Returns Nearly $60 Million to Drivers Whose Tips Were Illegally Withheld by Amazon (Nov. 2, 2021), https://www ftc.gov/news-events/news/press-releases/2021/11/ftc-returns-nearly-60-million-drivers-whose-tips-were-illegally-withheld-amazon.

them veterans, to purchase franchises.[51] We have also taken steps to make it easier for franchisees to file complaints with the Commission.

In addition to enforcement, the Commission is initiating efforts to ensure that bad actors across the marketplace pay a high price for preying on workers and small businesses. Last year, the Commission announced that it was resurrecting its Penalty Offense Authority to deter illegal practices market-wide and to protect consumers from scams that prey on economic precarity. The Penalty Offense Authority empowers the Commission to seek civil penalties of up to $46,517 per violation if an entity engages in conduct that the Commission has previously found unfair or deceptive in an administrative order other than a consent.[52] To trigger this authority, the FTC can send a Notice of Penalty Offenses outlining conduct that the Commission has determined is unlawful. In October 2021, the Commission sent Notice of Penalty Offenses to more than 1,100 businesses, including dozens of companies operating in the gig economy, putting them on notice that misleading money-making claims could lead to civil penalties.[53]

The Commission is also considering rulemakings to better protect workers and small businesses, as well as consumers. In February, the agency launched a rulemaking to address deceptive or unfair marketing using earnings claims.[54] If finalized, the rule would allow the FTC

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[51] Press Release, Fed. Trade Comm'n, FTC Sues Burger Franchise Company That Targets Veterans and Others With False Promises and Misleading Documents (Feb. 8, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-sues-burger-franchise-company-targets-veterans-others-false-promises-misleading-documents.
[52] 15 U.S.C. § 45(m)(1)(B).
[53] Press Release, Fed. Trade Comm'n, FTC Puts Businesses on Notice that False Money-Making Claims Could Lead to Big Penalties (Oct. 26, 2021), https://www.ftc.gov/news-events/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead.
[54] Press Release, Fed. Trade Comm'n, FTC Takes Action to Combat Bogus Money-Making Claims Used to Lure People into Dead-end Debt Traps (Feb. 17, 2022), https://www ftc.gov/news-events/news/press-releases/2022/02/ftc-takes-action-combat-bogus-money-making-claims-used-lure-people-dead-end-debt-traps.

to recover redress for defrauded consumers, and seek steep penalties against any multilevel marketers, for-profit colleges, "gig economy" platforms, and other bad actors who prey on people's hopes for economic advancement.[55] And in April, the Commission proposed significant amendments to the Telemarketing Sales Rule that would provide new protections for small businesses against telemarketing tricks and traps.[56]

Finally, to ensure we are taking a comprehensive approach to labor harms, we also forge law enforcement partnerships and engage in advocacy. We are coordinating closely with DOJ and the National Labor Relations Board over labor concerns, for example, and in December 2021, we filed an amicus brief in a class action suit by 7-Eleven franchisees in which we successfully argued that the FTC's Franchise Rule cannot be used to obviate state-imposed labor protections.[57]

C. Protecting Consumers from Fraud

The FTC is taking action to stop unscrupulous actors from exploiting hard-working consumers through hidden fees, bogus claims about the income they can earn, and the training opportunities they can receive from vocational schools. Consumers who are lured into these schemes can be driven deeply into debt and can be deprived of better opportunities.[58]

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[55] *Id.*
[56] Press Release, Fed. Trade Comm'n, Federal Trade Commission Proposes Small Business Protections Against Telemarketing Tricks and Traps (Apr. 28, 2022), https://www ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-proposes-small-business-protections-against-telemarketing-tricks-traps.
[57] Press Release, Fed. Trade Comm'n, FTC Files Amicus Brief in Patel, v. 7-Eleven, Inc. (Dec. 6, 2021), https://www ftc.gov/news-events/news/press-releases/2021/12/ftc-files-amicus-brief-patel-v-7-eleven-inc.
[58] *See, e.g.*, FED. RESERVE BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBT AND CREDIT (Nov. 2021), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2021Q3.pdf (showing that

Last month, the FTC and the Illinois Attorney General charged the Ed Napleton Automotive Group with tacking illegal junk fees for unwanted "add-ons" onto customers' loans and discriminating against Black consumers by charging them more for financing.[59] Napleton paid a record-setting $10 million to settle the case and is required to implement a fair lending program.[60] In February, Zurixx, LLC and its owners agreed to pay $12 million in redress to settle charges by the FTC and the State of Utah that they operated a massive real estate investment coaching scheme, using lavish false earnings claims to lure consumers into their scam. Similarly, in March, RagingBull.com and its co-founders agreed to pay $2.425 million to settle charges that they marketed investment services with bogus earnings claims that harmed consumers, including immigrants and older adults, claiming that the pandemic was a great time to learn their secret trading techniques to make profits.[61]

The Commission has also continued its long-fought efforts in protecting consumers from for-profit college fraud.[62] In October, the FTC sent Penalty Offense Notices to 70 for-profit

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student loan debt accounted for approximately 10% of total household debt in the third quarter of 2021); *see also* U.S. CENSUS BUREAU, COVID-19 ADDS TO ECONOMIC HARDSHIP OF THOSE MOST LIKELY TO HAVE STUDENT LOANS (Aug. 18, 2021), https://www.census.gov/library/stories/2021/08/student-debt-weighed-heavily-on-millions-even-before-pandemic html (stating that "student loans are among the largest contributors to household debt").

[59] Stipulated Order, FTC v. N. Am. Auto. Servs., Inc. (N.D. Ill. 2022) (No. 1:22-cv-01690), https://www.ftc.gov/system/files/ftc_gov/pdf/6-1%20Stipulated%20Order.pdf.

[60] *Id.*

[61] Complaint, FTC v. RagingBull.com, LLC (D. Md. 2020) (No. 1:20-cv-03538), https://www.ftc.gov/system/files/documents/cases/1_-_complaint_1.pdf; Stipulated Order, FTC v. RagingBull.com, LLC (D. Md. 2022) (No. 1:20-cv-03538), https://www ftc.gov/system/files/ftc_gov/pdf/294-1_-_proposed_stipulated_final_order_as_to_rb_defendants.pdf.

[62] *See*, *e.g.*, Stipulated Order, FTC v. U. of Phoenix, Inc. (D. Ariz. 2019) (No. 2:19-cv-05772), https://www.ftc.gov/system/files/documents/cases/de_15_stipulated_order_for_permanent_injunction_and_monetary_judgment.pdf (requiring the University of Phoenix and its parent company to pay $191 million to resolve allegations that they deceptively touted job opportunities); Stipulated Order, FTC v. Career Educ. Corp., (N.D. Ill. 2019) (No. 1:19-cv-05739), https://www ftc.gov/system/files/documents/cases/de_11_-_stipulated_order_for_permanent_injunction.pdf (providing $30 million in redress to consumers deceived by post-secondary and vocational schools' use of alleged deceptive lead generators).

colleges regarding deceptive or misleading job and earning prospects.[63] In February of this year, the FTC worked with the U.S. Department of Education as they announced the cancellation of more than $70 million in debt for defrauded DeVry students.[64] This was on top of more than $100 million that the Commission has already returned to DeVry students.[65] And last month, the FTC announced a settlement with St. James Medical School that returned more than $1 million to students in refunds and debt relief, while vindicating their rights under the Holder Rule.[66]

The Commission is also pursuing an aggressive new strategy to combat the long-running scourge of imposter scams. For years, scammers have falsely claimed that they are calling from the IRS, the Social Security Administration, or other offices or businesses to steal data and money from hard-working Americans. But the number of business imposter reports, mostly driven by scammers pretending to be an online retailer, soared during the pandemic—more than tripling between 2019 and 2021,[67] and topping $451 million in harm in 2021 alone.[68]

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[63] Press Release, Fed. Trade Comm'n, FTC Targets False Claims by For-Profit Colleges (Oct. 6, 2021), https://www.ftc.gov/news-events/press-releases/2021/10/ftc-targets-false-claims-profit-colleges.
[64] Press Release, Fed. Trade Comm'n, FTC Enforcement Action Leads U.S. Dept. of Education to Forgive $71.7 Million in Loans for Students Deceived by DeVry University (Feb. 16, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/02/ftc-enforcement-action-leads-us-dept-education-forgive-717-million-loans-students-deceived-devry.
[65] Press Release, Fed. Trade Comm'n, DeVry University Agrees to $100 Million Settlement with FTC (Dec. 15, 2016), https://www ftc.gov/news-events/news/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc.
[66] Press Release, Fed. Trade Comm'n, Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students (Apr. 15, 2022), https://www ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure.
[67] *Consumer Sentinel Network*, FED. TRADE COMM'N, https://www.ftc.gov/enforcement/consumer-sentinel-network (noting that 106,732 business imposter reports received in 2019, and 394,742 received in 2021) (last visited May 16, 2022).
[68] *Consumer Sentinel Network*, FED. TRADE COMM'N (data on file with the FTC).

In response to this alarming trend, the FTC launched an impersonator rulemaking to combat government and business impersonation fraud.[69] Codifying commonsense principles into rules helps ensure that scammers will pay a penalty for defrauding consumers and allows the Commission to seek redress for those who have been harmed.

Likewise, deploying authority granted by Congress, the Commission is taking comprehensive action to protect the integrity of the "Made in America" label and crack down on scammers who would abuse it. Last year, we finalized a Rule regarding deceptive Made in America labels,[70] and those who misuse the label can now face steep civil penalties on top of injunctions and other relief. Last month, we brought our first action under the rule, requiring a manufacturer of batteries to pay a civil penalty of triple its profits for mislabeling its products "Made in USA."[71] We continue to carefully monitor the market for false "Made in America" claims, particularly for personal protective equipment and other vital goods. Scammers who cheat consumers and American workers can expect to face heavy consequences under the Commission's new rule.

Finally, recognizing that deceptive and unfair practices may target and affect people from different communities in unique ways, in October, the Commission issued two reports providing updates on its efforts to serve communities of color and protect older consumers through

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[69] Press Release, Fed. Trade Comm'n, FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud (Dec. 16, 2021), https://www.ftc.gov/news-events/press-releases/2021/12/ftc-launches-rulemaking-combat-sharp-spike-impersonation-fraud.

[70] Press Release, Fed. Trade Comm'n, FTC Issues Rule to Deter Rampant Made in USA Fraud (July 1, 2021), https://www ftc.gov/news-events/press-releases/2021/07/ftc-issues-rule-deter-rampant-made-usa-fraud.

[71] Press Release, Fed. Trade Comm'n, FTC Enforces New Made in USA Rule against Lithionics and Owner Steven Tartaglia for Falsely Labeling Foreign-Made Batteries as American (Apr. 13, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-enforces-new-made-usa-rule-against-lithionics-owner-steven-tartaglia-falsely-labeling-foreign.

aggressive law enforcement, outreach and education, and research on reporting rates of different consumer issues to inform the FTC's work. The Serving Communities of Color staff report provided an update on the FTC's progress in the past five years, including bringing more than 25 enforcement actions in which the Commission could identify that the conduct targeted or disproportionately impacted communities of color and efforts to deliver consumer protection messages in an effective way.[72] Likewise, the Commission's report to Congress on Protecting Older Consumers highlighted the FTC's efforts to protect older consumers through law enforcement actions, particularly scams related to the COVID-19 pandemic.[73]

D. Fighting COVID Fraud

The Commission has deployed its authority under the COVID-19 Consumer Protection Act[74] (CCPA) to ensure that bad actors face severe consequences for using the pandemic to prey on American consumers. This month, for example, the FTC halted a bogus credit repair scheme for allegedly charging consumers for credit repair services of little to no value and convincing them to use their COVID-19 governmental benefits to invest in a bogus business opportunity that was essentially starting their own bogus credit repair scheme.[75] In March, the FTC, jointly with the U.S. Department of Justice and the Food and Drug Administration, filed a lawsuit against

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[72] FTC, SERVING COMMUNITIES OF COLOR: A STAFF REPORT ON THE FEDERAL TRADE COMMISSION'S EFFORTS TO ADDRESS FRAUD AND CONSUMER ISSUES AFFECTING COMMUNITIES OF COLOR (2021), https://www.ftc.gov/system/files/documents/reports/serving-communities-color-staff-report-federal-trade-commissions-efforts-address-fraud-consumer/ftc-communities-color-report_oct_2021-508-v2.pdf.
[73] FTC, PROTECTING OLDER CONSUMERS 2020 – 2021: A REPORT OF THE FEDERAL TRADE COMMISSION (2021), https://www ftc.gov/system/files/documents/reports/protecting-older-consumers-2020-2021-report-federal-trade-commission/protecting-older-consumers-report-508.pdf.
[74] Pub. L. No. 116-260, 134 Stat. 1182, Division FF, Title XIV § 1401 (2020).
[75] Complaint, *FTC v. Rando*, No 3:22-cv-0487-TJC-MCR (May 3, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/01%20-%20Complaint.pdf.

B4B Earth Tea, LLC and related defendants for claims that their Earth Tea is clinically proven to treat, cure, and prevent COVID-19.[76] These most recent cases followed three CCPA cases filed last year.[77]

Even before the enactment of the CCPA, the FTC used Section 5 to challenge deceptive health claims,[78] illegal practices relating to sales of PPE[79] and sanitizing products,[80] and false claims targeting struggling small businesses that were seeking to submit applications for the Paycheck Protection Program.[81] The Commission recently won victories in two of these cases. In

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[76] Complaint, *United States v. B4B Earth Tea LLC*, No. 22-CV-1159 (E.D.N.Y. Mar. 3, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/us_v._b4b_earth_tea_complaint_22cv1159.pdf.

[77] *See* Complaint, *United States v. Xlear, Inc.*, No. 2:21-cv-00640 (D. Utah Oct. 28, 2021), https://www.ftc.gov/system/files/documents/cases/filed_complaint_xlear_v_jones_v.1.pdf; Complaint, *United States v. Nepute*, No. 4:21-cv-00437 (E.D. Mo. Apr. 15, 2021), https://www.ftc.gov/system/files/documents/cases/2023188eneputecomplaint_0.pdf; Complaint, *FTC v. Frank Romero dba Trend Deploy*, No. 5:21-cv-00343 (M.D. Fla. June 29, 2021), https://www.ftc.gov/system/files/documents/cases/complaint_-_trend_deploy.pdf.

[78] For example, the Commission alleged that a company deceptively advertised a $23,000 treatment plan as a scientifically-proven way to treat COVID-19, even after receiving a warning from the FTC, and recently settled with one defendant for over $100,000. Complaint*, FTC v. Golden Sunrise Nutraceutical, Inc.*, No. 1:20-cv-00540 (E.D. Cal. July 30, 2020), https://www.ftc.gov/system/files/documents/cases/202_3146_golden_sunrise_-_complaint.pdf; Stipulated Order for Permanent Injunction and Monetary Judgment as to Defendant Stephen Meis, *FTC v. Golden Sunrise Nutraceutical, Inc.,* No. 1:20-cv-00540 (E.D. Cal. June 11, 2021), https://www.ftc.gov/system/files/documents/cases/052-_gs_stipulated_order_for_permanent_injunction_and_monetary_judgment_as_to_defendant_stephen_meis.pdf.

[79] *See*, *e.g.*, Complaint, *FTC v. SuperGoodDeals.com, Inc*., No. 20-cv-3027 (E.D.N.Y. July 8, 2020), https://www.ftc.gov/system/files/documents/cases/202_3135_supergooddeals_-_complaint.pdf; Complaint, *FTC v. Am. Screening, LLC*, No. 4:20-cv-1021 (E.D. Mo. Aug. 4, 2020), https://www.ftc.gov/system/files/documents/cases/202_3158_american_screening_-_complaint.pdf; Complaint, *FTC v. Zaappaaz LLC*, No. 4:20-cv-02717 (S.D. Tex. Aug. 4, 2020), https://www.ftc.gov/system/files/documents/cases/202_3136_zaappaaz_-_complaint.pdf.

[80] *See*, *e.g.*, Complaint, FTC v. QYK Brands LLC, No. 8:20-cv-01431 (C.D. Cal. Aug. 4, 2020), https://www.ftc.gov/system/files/documents/cases/202_3147_qyk_brands_-_complaint.pdf. *See also* Complaint, FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through: www.cleanyos.com et al., No. 5:20-cv-02494 (N.D. Ohio Nov. 4, 2020), https://www.ftc.gov/system/files/documents/cases/complaint_w-a_filed.pdf. The Commission obtained a federal court order that, while litigation proceeds, prohibits the defendants from making deceptive claims, suspends their deceptive websites, and bars them from using their websites to collect money from consumers. Preliminary Injunction, FTC v. One or More Unknown Parties Deceiving Consumers Into Making Purchases Through: www.cleanyos.com et al.*,* No. 5:20-cv-02494 (N.D. Ohio Nov. 19, 2020), https://www.ftc.gov/system/files/documents/cases/ftc_v_unknown_preliminary_injunction_with_att_a.pdf.

[81] Stipulated Final Order, *FTC v. Ponte Investments, LLC*, (D.R.I. 2020) (No. 1:20-cv-00177), https://www.ftc.gov/system/files/documents/cases/x200042_ponte_inv_-_stipulated_final_order.pdf.

FTC v. QYK Brands LLC, the court found that defendant companies and their principals violated the Mail Internet and Telephone Order Rule and Section 5 of the FTC Act by making false promises to quickly deliver PPE and unsubstantiated claims that their dietary supplement could prevent consumers from contracting the COVID 19 virus.[82] The Commission won another victory against *American Screening, LLC*, where the court found that the firm and its principals made false promises to deliver PPE.[83]

E. Truthfulness in National Advertising

Ensuring that advertising is truthful and not misleading has long been one of the FTC's core missions, and this past year is no different. Last month, the Commission issued an administrative complaint against Intuit Inc., the maker of the TurboTax tax filing software, for allegedly deceiving consumers with bogus advertisements pitching "free" tax filing that was not free for most taxpayers.[84] In April, the FTC used its Penalty Offense Authority to seek $5.5 million in civil penalties against Kohl's, Inc.[85] and Walmart, Inc.,[86] alleging that the companies falsely marketed dozens of rayon textile products as bamboo and made deceptive environmental claims that the "bamboo" textiles were made using ecofriendly processes, when in reality, the processes use toxic chemicals and result in hazardous pollutants.[87]

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[82] Order*, FTC v. QYK Brands LLC*, (C.D. Cal. 2022) (No. 8:20-cv-01431).
[83] Order, *FTC v. Am. Screening*, LLC, (E.D. Mo. 2022) (No. 4:20-CV-1021).
[84] Complaint, *In re Intuit Inc*., No. 9408 (F.T.C. Mar. 28, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/D09408IntuitP3Complaint.pdf.
[85] Complaint, *United States v. Kohl's Inc. f/k/a Kohl's Dep't Stores, Inc*., No. 22-964 (D.D.C. Apr. 8, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/2023171KohlsComplaint.pdf.
[86] Complaint, *United States v. Walmart Inc.* (D.D.C. 2022) (No. 22-965), https://www.ftc.gov/system/files/ftc_gov/pdf/2023173WalmartComplaint.pdf.
[87] Press Release, Fed. Trade Comm'n, FTC Uses Penalty Offense Authority to Seek Largest-Ever Civil Penalty for Bogus Bamboo Marketing from Kohl's and Walmart (Apr. 8, 2022), https://www.ftc.gov/news-events/news/press-

In March, the Commission required a retailer to pay $4.2 million to settle allegations that it blocked negative reviews of its products from being posted on its website.[88] *Fashion Nova* marked the FTC's first case involving a company's failure to post negative customer reviews. We also issued letters to ten review management service companies, placing them on notice that avoiding the collection or publication of negative reviews violates the FTC Act.[89]

Finally, in another law enforcement action challenging online reviews, Vision Path, Inc., which offers direct-to-consumer Hubble contact lenses, agreed to pay penalties and redress totaling $3.5 million to resolve charges that it violated prescription requirements under the Contact Lens Rule and failed to disclose that many customer reviews were written by compensated reviewers and, in at least one instance, by a company executive—in violation of the FTC Act.[90]

releases/2022/04/ftc-uses-penalty-offense-authority-seek-largest-ever-civil-penalty-bogus-bamboo-marketing-kohls. The district court entered the stipulated order against Walmart, resulting in a $3 million penalty, the largest penalty in any of our environmental cases to date.

[88] Decision and Order, *In re Fashion Nova, LLC* (F.T.C. 2022) (No. C-4759), https://www.ftc.gov/system/files/ftc_gov/pdf/1923138C4759FashionNovaOrder_0.pdf.

[89] Press Release, Fed. Trade Comm'n, Fashion Nova will Pay $4.2 Million as part of Settlement of FTC Allegations it Blocked Negative Reviews of Products (Jan. 25, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews. In addition, in October 2021, the agency also sent Notices of Penalty Offenses to more than 700 advertisers and consumer product companies regarding fake reviews and other misleading endorsements. Press Release, Fed. Trade Comm'n, FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements (Oct. 13, 2021), https://www ftc.gov/news-events/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other.

[90] Complaint, *United States v. Vision Path, Inc*. (D.D.C. 2022) (No. 1:22-cv-00176), https://www.ftc.gov/system/files/documents/cases/complaint_filed.pdf; Stipulated Final Order, *United States v. Vision Path, Inc.* (D.D.C. 2022) (No. 1:22-cv-00176), https://www.ftc.gov/system/files/documents/cases/stipulated_order_filed.pdf.

F. Repair Restrictions

Repair restrictions—practices that have the effect of limiting consumers' ability to repair products they own—have made consumer products more difficult to fix and maintain.[91] Repairs today often require specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software.[92] The effects of these restrictions have been exacerbated during the pandemic as consumers have relied more heavily on technology than ever before.[93] And, the burden of repair restrictions may fall more heavily on communities of color and lower-income communities.[94]

Accordingly, the Commission has been taking a careful look at the ways in which repair restrictions harm consumers and competition. In May 2021, the Commission submitted a report to Congress, entitled Nixing the Fix: An FTC Report to Congress on Repair Restrictions.[95] In the report, the Commission found that, based on a review of the comments and research submitted, as well as materials presented during a July 2019 workshop, there was scant evidence to support manufacturers' justifications for repair restrictions.[96]

In July 2021, the Commission unanimously issued a policy statement aimed at manufacturers' practices that make it difficult for consumers to repair their products or use

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[91] *See generally* FTC, NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS (2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf [hereinafter Nixing the Fix Report].
[92] *Id.* at 17-19.
[93] *Id.* at 4.
[94] *Id.* at 3-4.
[95] NIXING THE FIX REPORT, *supra* note 91.
[96] *Id*. at 6.

independent repair providers to make the repairs for them.[97] The policy statement makes clear that the Commission will prioritize investigations involving unlawful repair restrictions and devote more enforcement resources to combat such unlawful practices.[98] In addition, I am encouraged by legislative efforts that seek to expand consumers' ability to repair products on their own and ensure that independent repairers have a chance to compete. I am also pleased to see that certain firms have announced new initiatives that they assert will increase repair options. Time will tell if those initiatives hold true to promise, and the Commission stands ready to hold companies accountable for imposing unlawful repair restrictions on consumers.

G. Unwanted Calls

Unwanted calls are a significant source of consumer reports to the FTC. These calls repeatedly disturb consumers' privacy and frequently market fraudulent goods and services that cause significant economic harm. In FY 2021, the FTC received more than 5 million complaints about unwanted calls, including 3.4 million reports about robocalls.[99] The Commission uses every tool at its disposal to combat these calls: aggressive law enforcement, initiatives to spur technological solutions, and robust consumer and business outreach.

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[97] Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Mfrs. and Sellers (Jul. 21, 2021), https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf.
[98] *Id.*
[99] FTC, DO NOT CALL REGISTRY DATA BOOK 2021 (2021), https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2021/dnc_data_book_2021.pdf (Complaint Figures for FY 2021).

The FTC has filed 154 enforcement actions against 520 companies and 418 individuals alleged to be responsible for placing billions of unwanted telemarketing calls to consumers. We have also collected over $293 million in civil penalties and equitable monetary relief from these violators. In cases where perpetrators ran telemarketing scams, the FTC has obtained court orders shutting down these businesses and freezing their remaining assets so that those funds could be returned to consumers. Most recently, in August 2021 and January 2022, the FTC obtained orders from the Central District of California requiring two Voice-over-Internet Protocol (VoIP) service providers to turn over information that the agency is seeking as part of ongoing investigations into potentially illegal robocalls.[100] In a third action, the FTC recently stopped a VoIP provider from facilitating illegal telemarketing robocalls, including scams relating to the pandemic.[101]

H. Consumer Education and Outreach

The Commission augments its law enforcement actions with education campaigns and resources to help consumers avoid the latest scams and inform businesses about where the FTC draws the line. Increasingly, these efforts include a focus on fighting frauds and scams exploiting digital platforms and other tools to target historically underserved communities.

[100] Order to Show Cause, *FTC v. Deltracon Inc*., No. 8:21-mc-25 (C.D. Cal. 2021) https://www.ftc.gov/system/files/ftc_gov/pdf/deltracon_ecf_07_-_order_to_show_cause_0.pdf; Order, *FTC v. XCast Labs, Inc*., (C.D. Cal. 2022) (No. 2:21-mc-1026), https://www.ftc.gov/system/files/ftc_gov/pdf/xcastorderacceptingfindingandrecommendations.pdf.

[101] Press Release, Fed. Trade Comm'n, FTC Takes Action to Stop Voice over Internet Provider from Facilitating Illegal Telemarketing Robocalls, Including Scams Relating to the Pandemic (Apr. 26, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/04/ftc-takes-action-stop-voice-over-internet-provider-facilitating-illegal-telemarketing-robocalls.

The FTC has actively extended its outreach to historically underserved communities to learn about issues affecting these communities. Using this input from various communities, and leveraging Congressional funding from the American Rescue Plan, the FTC has placed multilingual anti-fraud messaging into targeted print and radio markets that serve Asian-American, Black, Latino, and Tribal communities. These campaigns emphasize topics related to the COVID-19 pandemic, including scams related to employment and business opportunities, health products and claims, and auto buying and financing.

Working with partners is key to reaching diverse audiences at the grassroots level. For example, reaching older people is an ongoing effort, and AARP is a long-time partner in helping the agency achieve its goals. The FTC regularly participates in AARP tele-townhalls, including a recent event that highlighted how older adults can avoid gift card, romance, government impersonator, and sweepstakes scams, an event that attracted more than 32,000 participants from across the country. The FTC also recently shared print resources with 1,300 AmeriCorps Senior project directors nationwide, which they, in turn, shared at in-service trainings with 200,000 community level older adult volunteers with the Senior Companion, Foster Grandparent, and RSVP programs.

The Commission also has long worked to reach non-native English speakers, especially through ethnic media. In addition, the FTC regularly engages with partners through libraries, schools and community colleges, credit unions, legal services, and local law enforcement—as well as through mainstream Spanish-language media – to better serve Spanish-speaking and other language speaking audiences. Meanwhile, to reach rural communities and others who lack reliable internet access, the FTC mailed post cards to nearly a quarter of a million people and delivered letters to community health professionals in 5,000 rural and urban clinics to help people avoid COVID-related fraud.

IV. MARKET INQUIRIES, STUDIES, AND RESEARCH

The FTC also has a mission to research and study markets to ensure we are keeping up with emerging market trends and business practices. The agency continues to harness this tool to examine economic conditions and deepen our understanding of key trends.

For example, in December 2021 the Commission voted to initiate a study into supply chain disruptions.[102] Specifically, the agency ordered nine large retailers, wholesalers, and consumer good suppliers to provide detailed information that will help the FTC shed light on the causes behind ongoing supply chain disruptions in the U.S. economy. In addition to better understanding the reasons behind the disruptions, the study will examine whether supply chain disruptions are leading to specific bottlenecks, shortages, anticompetitive practices, or contributing to rising consumer prices.

The Commission also previously examined past unreported acquisitions to help deepen our understanding of large technology firms' acquisition activity, including how these firms report their transactions to the federal antitrust agencies, and whether large tech companies are making potentially anticompetitive acquisitions of nascent or potential competitors that fall

[102] Press Release, Fed. Trade Comm'n, FTC Launches Inquiry into Supply Chain Disruptions (Nov. 29, 2021), https://www ftc.gov/news-events/news/press-releases/2021/11/ftc-launches-inquiry-supply-chain-disruptions.

below HSR filing thresholds.[103] Launched in February 2020, the Commission issued Special Orders to five large tech firms (Alphabet, Amazon.com, Apple, Facebook, and Microsoft), requiring them to provide information about prior acquisitions not previously reported to the antitrust agencies under the HSR Act.[104] At an open Commission Meeting in September 2021, FTC staff presented a report of their findings that highlighted the systemic nature of the acquisition strategies of digital platforms. The report captures the extent to which these firms have devoted tremendous resources to acquiring start-ups, patent portfolios, and entire teams of technologists—and how they were able to do so largely outside of the purview of federal enforcers.[105]

To further understand and shed light on social media practices, in December 2020, the Commission issued Special Orders to nine social media and video streaming companies, including Facebook (now Meta Platforms), YouTube, and ByteDance (parent company of TikTok). These Orders cover a broad range of social media practices, including how these companies collect and use personal information, their advertising and user engagement practices, and how their practices affect children and teens.

Additional ongoing studies also include an inquiry into the effects of physician group and healthcare facility consolidation that occurred from 2015 to 2020.[106] This type of merger

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[103] Press Release, Fed. Trade Comm'n, FTC to Examine Past Acquisitions by Large Technology Companies (Feb. 11, 2020), https://www ftc.gov/news-events/news/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies.
[104] *Id*.
[105] Press Release, Fed. Trade Comm'n, FTC Staff Presents Report on Nearly a Decade of Unreported Acquisitions by the Biggest Technology Companies (Sept. 15, 2021), https://www ftc.gov/news-events/news/press-releases/2021/09/ftc-staff-presents-report-nearly-decade-unreported-acquisitions-biggest-technology-companies.
[106] Michael G. Vita, Fed. Trade Comm'n, Physician Group and Healthcare Facility Merger Study (Apr. 14, 2021), https://www.ftc.gov/enforcement/competition-matters/2021/04/physician-group-healthcare-facility-merger-study.

retrospective can also inform our merger enforcement work going forward.

I also recognize the importance of learning from market participants, so the agency has opened up new avenues to hear directly from people about, for example, unfair contract terms that they may encounter.[107] This input continues to inform the agency's work.

V. CONCLUSION

The FTC remains committed to using its resources to effectively police unfair methods of competition, prevent unfair or deceptive practices, and to vigorously enforce the laws Congress has tasked the agency with administering. The agency is also committed to anticipating and responding to changes in the marketplace and to adapting as needed to meet new challenges. Recent months have only continued to highlight how the Commission is positioned to tackle some of the most pressing problems confronting Americans, and additional resources from Congress would equip us to deliver on this mission. I look forward to continuing to work with the Subcommittee and Congress, and I am happy to answer your questions.

[107] Request for Public Comment Regarding Contract Terms That May Harm Fair Competition, FTC-2021-0036, https://www.regulations.gov/docket/FTC-2021-0036 (last visited May 17, 2022). *See also* Press Release, Fed. Trade Comm'n, FTC Opens Rulemaking Petition Process, Promoting Public Participation and Accountability (Sept. 15, 2021), https://www ftc.gov/news-events/news/press-releases/2021/09/ftc-opens-rulemaking-petition-process-promoting-public-participation-accountability.