

RPTS MCCONNELL

DCMN HERZFELD

THE FTC AT 100: WHERE DO WE GO FROM HERE?

TUESDAY, DECEMBER 3, 2013

House of Representatives,

Subcommittee on Commerce, Manufacturing, and Trade,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2123, Rayburn House Office Building, Hon. Lee Terry [chairman of the subcommittee] presiding.

Present: Representatives Terry, Lance, Blackburn, Harper, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Barton, Upton (ex officio), Schakowsky, Sarbanes, McNerney, Welch, Yarmuth, Dingell, Matheson, Barrow and Christensen.

Staff Present: Charlotte Baker, Press Secretary; Kirby Howard, Legislative Clerk; Nick Magallanes, Policy Coordinator, CMT; Gib

Mullan, Chief Counsel, CMT; Shannon Weinberg Taylor, Counsel, CMT; Michelle Ash, Democratic Chief Counsel, Consumer Protection; and William Wallace, Democratic Professional Staff Member.

Mr. Terry. All right. We are going to go ahead and get started or start this hearing, and I just want to say at the beginning before I start my statement that I am just really pleased that all of our Commissioners are here today. And we have Chairwoman Edith Ramirez, sworn into office as a Commissioner in April 2010 and designated Chairwoman in March 2013. And prior to joining the Commission, Chairwoman Ramirez was a partner in the law firm of Quinn Emanuel Urquhart -- close enough -- & Sullivan -- as an Irishman, the Sullivan is a lot easier to pronounce -- LLP in Los Angeles.

And then we have Commissioner Julie Brill. Thank you. She was sworn into office in April 2010. Previously Commissioner Brill was the Senior Deputy Attorney General and Chief of Consumer Protection and Antitrust for the North Carolina Department of Justice. Prior to that she served as Assistant Attorney General for Consumer Protection and Antitrust for the State of Vermont for more than two decades.

Thank you for being here.

Maureen Ohlhausen, Commissioner, sworn into office April 2012. Commissioner Ohlhausen previously has served for 11 years at the Commission and held the position of Director of Policy Planning under Chairman Kovacic. She is the most recently a partner at Wilkinson Barker and Knauer.

And then last but not least, our Commissioner Joshua Wright, sworn into office January 13th. Commissioner Wright was a professor of law at George Mason University School of Law focusing on antitrust and competition law. He holds a Ph.D. in economics and served at the FTC

as its scholar-in-residence at the Bureau of Competition from 2007 to 2008.

And we are glad to have you here, and now we are going to start our opening statements. I think a lot of you have been through our hearings before. Commissioner Wright, you may be the only one that is new to this position as a Commissioner.

So good morning, and welcome, everyone here, to this hearing, which is aptly titled The FTC at 100: Where Do We Go from Here? And that is a good question. We all have a stake in the FTC's current mission to promote consumer welfare by ensuring that business practices in the United States are fair and transparent, while also addressing any market collusion or anticompetitive activity that could unfairly fix prices at a higher level than the market would otherwise demand.

To achieve these goals, the FTC has a wide mix of instruments at its disposal, such as administrative adjudication, law enforcement, and rulemaking authority. However, like all entities in the government, prioritization of goals is critical. Not only are the FTC's resources finite, but they also -- the sheer breadth of the FTC's jurisdiction makes it necessary.

To that end I am concerned with various issues that the FTC, some recent and others long standing, that not only may take the Commission away from the scope in which Congress legislated, but it also add to the regulatory uncertainty many businesses feel already.

One clear example is the Commission's use of Section 5 authority under the FTC Act, which allows the Commission to address unfair and

deceptive trade practices. I understand that authorities under this section represents an important enforcement tool for the agency, especially in tackling entities like patent trolls. However, absent a coherent statement of policy on how the Commission plans to enforce Section 5, many businesses, large and small, are left to examining past decisions to see how they may fit into a certain set of facts.

I think one area under Section 5 that warrants review is how the Commission uses its authority to address the use of security of data. Commercial entities are finding new ways of using data, invaluable ways, that can help bring new products to consumers. For example, Google may sell some of our information, but we get free cloud-based email service in return. The FTC's job is to police the actions of companies in its use of personal information. Essentially this means enforcing Section 5's requirement that companies don't make any misrepresentations to consumers about what the companies do with personal information.

But we wouldn't be doing our job in Congress if we didn't examine whether the arrangement continues to work to the benefit of consumers and businesses alike. The exchange in monetization of data is valuable. According to a recent Harvard study and Columbia, the data-driven marketing sector created about \$156 billion in revenue and contributed to about 675,000 jobs. But the exchange of our data could only be done with our consent, and that consent should be meaningful choice. We should examine the other consent decree paradigm, you know, the right answer for both consumers, for companies trying to comply

with FTC policies.

Now, another example is the recently established Consumer Financial Protection Bureau. At first blush it seems that many of the actions undertaken by this agency were formerly under the purview of the FTC, and I have been vocal with my distrust of the CFPB and my concerns with this obscure agency further compounded by the possibility that they may be duplicating the efforts of the FTC, or hindering your efforts in the FTC. This is something that I hope to address during this hearing.

Lastly, I just want to again thank all of you for being here. And who wants a minute 28?

I yield to the vice chair.

[The prepared statement of Mr. Terry follows:]

***** COMMITTEE INSERT *****

Mrs. Blackburn. Thank you, Mr. Chairman.

The FTC is turning 100 in less than a year, and I think it is wonderful that we are assembling today to explore your current role in jurisdiction over protecting consumers and competition in what we want to have remain a dynamic marketplace. The Federal Government's propensity to constantly overreach is a huge concern, and it is important that our regulators respect the rule of law. That means making their case in courts instead of creating back-door informal regulations without judicial oversight.

Something else we should be mindful of is that if the D.C. circuit strikes down the FCC's open Internet order, it will become clear that the FTC is the de facto arbiter of the Net neutrality concerns, which will dramatically increase policymakers' attention on this agency. We need to understand whether the Commission is as well suited to effectively enforce its core mission as it can be? Is the Commission rigorous in its analysis of our markets, technologies, and economies? Is it prioritizing its resources appropriately? How can Congress and the FTC work better together to maximize consumer welfare?

We welcome you and appreciate your time today.

I yield back.

Mr. Terry. Thank you.

[The prepared statement of Mrs. Blackburn follows:]

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Mr. Terry. And I now recognize the ranking member of the subcommittee Ms. Schakowsky for her 5 minutes.

Ms. Schakowsky. Well, thank you, Mr. Chairman, for holding this hearing today on the Federal Trade Commission's nearly 100th birthday and to discuss the future of the agency. We have a real power panel today, and I want to welcome all of them for being here.

The FTC is on the front line of protecting both consumers and businesses from unfair, deceptive, fraudulent, or anticompetitive practices. Since taking over the head of the FTC in March, Chairwoman Ramirez has maintained a strong agency and pushed to increase standards in the marketplace to protect consumers and strengthen our economy. As a lifelong consumer advocate, I appreciate the work that has already been done at the FTC, and I look forward to Chairwoman Ramirez's continued leadership.

I am particularly pleased that the Chairwoman has focused on access to life-saving drugs, which I believe is one of the most important roles of the agency. The FTC has fought for pay-for-delay agreements in recent years, and the Supreme Court's decision in FTC is that Actavis --

Ms. Ramirez. Actavis.

Ms. Schakowsky. Actavis -- that reversed payment agreements can violate antitrust laws was a big win for consumers. The Commission's recent filing of an amicus brief in opposition to using risk evaluation and mitigation strategies to delay the creation of generics is another strong step towards protecting consumers. I look forward to the

continued progress of the Commission in ensuring access to safe, affordable drugs.

The FTC's role continues to expand as our social networks, shopping, banking, and other forms of communication and business, move to the Internet. At the same time, as its role is expanding, the FTC is struggling with less and less funding which has been worsened by the 5 percent sequester cuts. The Commission's prepared testimony points to, quote, "resource constraints," unquote, and the need to leverage those resources through, quote, "careful case selection," unquote.

We should not be asking one of our country's most important agencies to always choose which consumer protections it will be able to enforce. Priorities are important, but we don't want to shortchange consumers. We should, instead, work to ensure that the FTC has the resources it needs to maintain consumer protection and a fair marketplace.

The growth of the Internet has presented us with new questions about privacy rights and expectations, and that is why Chairman Terry and I decided earlier this year to form a Privacy Working Group, which is cochaired by Congress Members Blackburn and Welch. The group is tasked with exploring the current privacy landscape and considering possible solutions to challenges that we find.

A major concern for me within the privacy framework is the issue of privacy agreements. The FTC has the power to hold companies to the privacy agreements they offer their companies, their customers,

visitors, and users, and it does hold bad actors accountable. But there is no law requiring online businesses to offer specific privacy protections, or even to have privacy policies, and the FTC can't enforce what isn't promised. And it is also true, I think, that what is promised is often in a form not really meaningful to average consumers, if you have read any of those privacy agreements or found them, and you have the eyesight to actually see them. I look forward to hearing from our Commissioners as to whether a minimum online privacy standard is needed or would at least be helpful to the agency as it continues its important work.

Again, I look forward to your testimony today and to working with all of you Commissioners and my colleagues to support the FTC in its mission going forward.

[The prepared statement of Ms. Schakowsky follows:]

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Mr. Terry. You have got an extra minute. Do you want to yield?

Ms. Schakowsky. Oh, I would be happy to yield a minute. Any of the Members?

Then I yield back, Mr. Chairman.

Mr. Terry. The gentlelady yields back.

At this time I recognize the full committee chair, Mr. Upton of Michigan.

The Chairman. Thank you, Mr. Chairman. I, too, want to thank each of our Commissioners for being here this morning. Today we are going to examine the important role of the FTC, its impact on jobs in the economy, and what to look forward to in the agency's next century.

The FTC's grasp reaches far and wide, and it is the only Federal agency with both consumer protection and competition jurisdiction. From the smallest independent corner store to the largest industry, from online data collection to multimillion-dollar merger reviews, the FTC is charged with ensuring industry players play fair, competition thrives, and the consumers enjoy the fruits of that competition as well as protection from fraudsters. Of course, with such great power comes equal concern about the appropriate use of that power and potential consequences for job creation and economic growth.

Through a broader lens this committee is taking an agency-by-agency approach to review the state of government. How do we operate? How can we function better, more efficiently, and more effectively? Chairman Terry often puts it best when he calls it "clearing the underbrush"; clearing the bog that slows us down and makes

us less efficient.

Our duties are twofold: Pursue policies that protect the public, while also allowing us to work to ensure job creation, innovation, and economic growth are allowed to flourish. The FTC can play and does play an important role as we seek to improve our economic recovery.

And I yield to any other Member on our side wishing time.

Mr. Barton.

[The prepared statement of Mr. Upton follows:]

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Mr. Terry. Mr. Barton.

Mr. Barton. Thank you, Mr. Chairman.

Well, first of all, an early happy birthday. As I understand, this is the FTC's 100th anniversary next year, so happy birthday to the Commissioners.

I have been on this committee almost 30 years. It is very rarely that we have the time and the inclination to study an agency in depth, but we do want to take a real look at the FTC as it enters its second century of existence. And I will focus in my questions on the role of the FTC in protecting privacy of American citizens, with a special emphasis on children's privacy.

I have participated with the Commissioners of the FTC over the last several years on a number of panels, and we have looked at the issue of privacy and what the industry is doing, what the standard practices are, and, looking forward, what they need to be.

I look forward to listening to the Commissioners. I look forward to participating with the members of the committee in this subcommittee hearing, and I hope that very soon we will be working with the FTC to implement some new protections for our children's privacy, and our general citizens' privacy.

And with that I would be happy to yield to anybody. Anybody? If not, then I yield back to the subcommittee chairman.

[The prepared statement of Mr. Barton follows:]

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Mr. Terry. The gentleman yields back.

Now the other side has 5 minutes. Mr. Dingell, emeritus, would you like any of that time? You are entitled to it.

Mr. Dingell. Mr. Chairman, I thank you. I will let you allocate the time, and I thank you.

Mr. Terry. All right. Does anyone else on the minority side wish the time?

Seeing none, then all time has been yielded back.

And I think all of you know how this works. And so, Chairwoman Ramirez, you are now recognized, and we will not gavel at 5 minutes. We will let you finish.

STATEMENTS OF EDITH RAMIREZ, CHAIRWOMAN, FEDERAL TRADE COMMISSION;
JULIE BRILL, COMMISSIONER, FEDERAL TRADE COMMISSION; MAUREEN
OHLHAUSEN, COMMISSIONER, FEDERAL TRADE COMMISSION; AND JOSHUA WRIGHT,
COMMISSIONER, FEDERAL TRADE COMMISSION

STATEMENT OF EDITH RAMIREZ

Ms. Ramirez. Chairman Terry, Ranking Member Schakowsky, and members of the subcommittee, thank you for inviting us to testify regarding the Federal Trade Commission's work as we approach our 100th year. We appreciate this opportunity to discuss the FTC's unique, dual, and complementary role in promoting competition and protecting consumers.

The FTC has a tradition of working at the forefront of the most important emerging issues of the day. We do so using a mix of law enforcement, advocacy, research, and business and consumer education. Changes to the marketplace, like rapid technological innovation and globalization, drive much of our work. However, over the last century our goals have remained fundamentally the same, to prevent fraud and deception, ensure that companies keep their promises to consumers, and remove barriers to competition, all of which promote an even playing field that allows law-abiding businesses to flourish.

With a staff of approximately 1,200 and a fiscal year 2013 budget of \$296 million, the FTC has delivered results that belie its modest

size. Over the last 3 years, we have returned over \$196 million to victims of deceptive and unfair conduct, and delivered an additional \$117 million in several penalties and ill-gotten gains to the U.S. Treasury. We have also saved consumers approximately \$3 billion in estimated economic injury by stopping anticompetitive practices and mergers.

The hallmark of the FTC's consumer protection work is anticipating and tackling new marketplace issues and problems. In the 1960s, we were the first Federal agency to act on the health threat created by cigarettes, forcing manufacturers to implement health warnings in their advertising.

In the 1980s and 1990s, we used our congressional authority to launch a law enforcement program which continues today; obtaining Federal Court restraining orders, consumer redress, and permanent prohibitions against thousands of consumer deception schemes. And in the early 2000s, the agency took action against unwanted telemarketing calls by implementing the Do Not Call Registry, which kicked off our role as an early protector of consumers' privacy both offline and online.

The FTC continues to combat scams most familiar to consumers, such as harassing telemarketers, sham weight-loss cures and fraudulent business opportunities, and newer harms associated with emerging technologies and business practices.

As in our consumer protection efforts, we have a long history of promoting competition in the marketplace, using enforcement, advocacy

and research. We have issued the influential Horizontal Merger Guidelines along with the Department of Justice, advanced merger and monopolization law with many important victories in crucial cases, and released reports that have helped shape competition policy and enforcement in critical areas to consumers and the economy such as technology and health care.

In more recent years we have turned our attention to those emerging activities that posed the greatest threat to vigorous competition. For example, we have worked to stop drug companies from stifling the entry of generic drugs by entering into pay-for-delay agreements, including obtaining a significant victory for consumers at the Supreme Court last term in *Actavis*. We have fought against anticompetitive healthcare provider consolidation that threatens higher cost without better care, and in doing so we achieved another important victory in the Supreme Court in the *Phoebe Putney* case, clarifying the scope of the State action doctrine. And we have acted to protect competition and innovation in the technology sector.

In fiscal year 2013, we brought 27 new competition cases and continued to enforce compliance with our existing orders and obligations under the Hart-Scott-Rodino Act. Beyond our law enforcement, we promote competition and educate stakeholders with workshops, reports, and advocacy. For example, our staff recently submitted comments to the District of Columbia Taxicab Commission, cautioning that rules it has proposed may restrict consumers from using new SmartPhone software applications to hail cabs. And as businesses

become increasingly global, the FTC has coordinated closely with international counterparts in both our enforcement and policy efforts.

The Commission has benefited from a culture of bipartisanship, collegiality, and consensus in our decisionmaking that yields a balanced and consistent approach to our work, and we are fortunate to have a truly expert and dedicated staff, one that, despite being asked to do more with fewer resources, has consistently rated the FTC as among the top agencies to work for. Given this rich reservoir of talent, commitment, and energy, we are confident that we can meet the challenges of our second century.

And with that background, it is my pleasure to introduce my fellow Commissioners. First, Julie Brill, who will be providing more details on some of the Commission's current priorities, including our efforts to stop scams targeting financially distressed consumers, protect privacy and data security, and address anticompetitive conduct in the healthcare industry.

Next, Maureen Ohlhausen, who will describe the FTC's efforts to address and adapt to external changes and challenges, including technological advances, evolving markets, and globalization.

And Josh Wright, who will discuss our unique research capacity, the expertise of our Bureau of Economics, and our ongoing efforts to review and update our rules and guides.

Thank you.

[The prepared statement of Ms. Ramirez follows:]

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Mr. Terry. Commissioner Brill.

STATEMENT OF JULIE BRILL

Ms. Brill. Good morning. My name is Julie Brill. I will highlight some of the significant substantive work under way at the Federal Trade Commission as we approach our 100th anniversary.

Let me begin with our consumer protection mission. The Federal Trade Commission is taking effective actions to protect consumers in a recovering economy. Aggressive enforcement plays a key role, and we actively monitor the marketplace to identify, understand, and eliminate financial scams. Recently we have focused on putting an end to scams that falsely promised to reduce consumers' mortgage payments, prevent foreclosure, or ease credit card debts. And we have stopped debt collectors who violated the law in their efforts to obtain payments from consumers, some of whom did not even owe a debt in the first place. We pay particularly close attention to schemes that target vulnerable consumers, such as the elderly, and military service members and their families.

The FTC is also the Nation's top cop on the consumer, data security, and privacy beat. Our enforcement and policy work in these areas helps to ensure that consumers have confidence in the dynamic and ever-changing marketplace for personal information. We enforce the Fair Credit Reporting Act, and we pay particularly close attention to children's online privacy as mandated by Congress in the Children's

Online Privacy Protection Act.

For over a decade, under both Republican and Democratic leadership, we have challenged deceptive and unfair data security and privacy practices. In that time period, we have brought 47 cases against companies that failed to properly secure consumer information, and more than 40 cases relating to the privacy of consumer data. Some of these cases involve household names such as Google and Facebook, but we have also brought myriad cases against less well-known companies that spammed consumers, violated commitments in their privacy policies, installed spyware on consumers' computers, or otherwise crossed the lines of deception or unfairness in their data collection and use practices.

In all our work we recognize the need to stay abreast of fast-paced technological changes. As the world has moved to mobile, we have focused on the effects of data collection and use practices, as well as the variety of mobile payment systems in this complex and evolving marketplace. We just held a workshop on the Internet of Things to explore data security and privacy issues related to connected devices, smart cars, smart medical devices, and smart appliances.

Moving to our competition mission, here are some highlights, some recent highlights, from our work to promote competition and free markets. In the high-tech marketplace, the Commission has examined difficult issues at the intersection of antitrust and intellectual property laws; issues related to innovation, standards setting, and patents. The Commission's policy work in this area is grounded in the

recognition that intellectual property and competition laws share the fundamental goals of promoting innovation and consumer welfare.

With respect to the healthcare market, the Commission devotes significant resources to ensure that competition will enable market participants to deliver cost containment, excellence, and innovation. Using enforcement as its primary tool, the Commission works to prevent anticompetitive mergers and conduct that might diminish competition in health care.

This year, as both Ranking Member Schakowsky and Chairwoman Ramirez have noted, the FTC won an important pharmaceutical enforcement case in the Supreme Court. The Actavis case involved so-called reverse payments between branded and generic pharmaceutical firms. These payments had the effect of keeping lower-priced generic drugs off the market to the detriment of consumers. The Supreme Court ruling that these payments should be subject to the antitrust laws was an important win for consumers. The Actavis decision vindicated the balanced and bipartisan goal of the Hatch-Waxman Act to increase the rewards of branded pharmaceutical manufacturers for bringing new drugs to market, and increase the incentive of generics to challenge invalid drug patents.

Thank you.

Mr. Terry. Commissioner Ohlhausen, you are now recognized.

STATEMENT OF MAUREEN OHLHAUSEN

Ms. Ohlhausen. Chairman Terry, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to appear before you today. I am Commissioner Maureen Ohlhausen, and my statement will briefly address the FTC's ongoing efforts to address technological change, evolving markets, and increasing globalization, as well as the agency's important international activities.

I will first highlight some of our recent efforts to stay abreast of competition and consumer protection issues in high tech and other rapidly evolving areas, which include law enforcement as well as other tools. For example, using our authority under Section 6(b) of the FTC Act, we can obtain information under a compulsory process for market participants and pursue a study of a particular competition or consumer protection issue.

As we announced in September, the FTC plans to perform such a study of the impact of patent assertion entity, or PAE, activity on competition and innovation. This study should provide us with a better understanding of the activities of PAEs and its various costs and benefits.

The Commission may also form an internal task force to examine the competition or consumer protection implications raised by a particular policy proposal. The FTC did this in in 2007, when former Chairman Majoras formed the Internet Access Task Force, which I had

the honor of heading. The task force issued a set of recommendations regarding network neutrality proposals that were being debated at the time, and which continue to be debated today.

Finally, one of the FTC's most effective means of obtaining information is holding public workshops, and as Commissioner Brill already mentioned, we recently held a workshop on the Internet of Things.

The Commission is also devoting significant resources to addressing the mobile phenomena. The FTC has a Mobile Technology Unit which conducts research; follows various platforms, app stores and applications available to consumers; trains FTC staff on mobile technology issues; and develops law enforcement cases involving mobile technologies.

Before concluding my comments on the FTC's efforts in the high-tech space, I would like briefly to discuss an area in which expanding our existing statutory authority would be in the public interest.

Although the FTC has nearly a century of experience protecting consumers across many industries, the exemption from our jurisdiction for communications common carriers frustrates effective consumer protection with respect to a wide variety of activities, including privacy, data security, and billing practices. With the convergence of telecom, broadband, and other technologies, I urge Congress seriously to consider removing this antiquated limitation on our jurisdiction and putting these competing technologies on an equal

footing. The Commission has testified in favor of repealing the Communications Common Carrier Exemption in the past, and I would like to take this opportunity to express my support for such repeal.

Another key change for consumers and competition is our increasingly global economy. Thus, the FTC's international efforts are critical to the agency's competition and consumer protection missions. I would like to highlight two important areas of focus in our bilateral efforts: our use of the U.S. SAFE WEB Act and our interactions with the Chinese competition agencies.

The U.S. SAFE WEB Act enables the FTC both to share information with foreign law enforcement agencies and to obtain information on their behalf. And this is vital to strengthening the culture of mutual assistance, but enables law enforcers to achieve greater results for consumers. And one example of this cooperation is the six cases the FTC filed last year against mostly foreign-based operators of a massive tech-support scam. I applaud Congress' decision to reauthorize this important law enforcement tool last year.

On the competition side, the FTC has an increasingly important bilateral relationship with China and its three competition agencies. In July 2011, the FTC and the DOJ signed a Memorandum of Understanding with the Chinese agencies, and since then we have met on multiple occasions to discuss enforcement and policy issues.

Even before the signing of the MOU, the FTC and the DOJ had devoted considerable resources to working with Chinese officials on developing the Chinese antimonopoly law which went in effect in 2008, and our

efforts to convince the Chinese agencies to pursue sound competition policies will ultimately benefit U.S. businesses and consumers.

One of the top priorities of the FTC's international program is its work with multilateral fora, including in particular the International Competition Network, in developing best practices for the world's competition agencies. The ICN has a chief consensus on recommended practices in several areas, including merger review procedures, substantive merger analysis, and the criteria for assessing abusive dominance.

I look forward to working with my colleagues on the Commission on the opportunities and challenges our agency will face as we enter our second century. Thank you.

Mr. Terry. Thank you.

And now, Mr. Wright, Commissioner Wright, you are recognized for 5 minutes.

STATEMENT OF JOSHUA WRIGHT

Mr. Wright. Thank you, Chairman Terry, Ranking Member Schakowsky, and distinguished members of the subcommittee, for this opportunity to speak to you today about the FTC at 100. I want to begin by discussing some of the unique institutional advantages and expertise at the Federal Trade Commission.

As both an economist and a lawyer, I appreciate the unique structure of the FTC and how its organization enhances our ability to protect consumers. As you know, the FTC has three bureaus: Competition, Consumer Protection, and Economics. The Bureau of Competition endeavors to promote and protect free markets and vigorous competition, and the Bureau of Consumer Protection works to prevent fraud, deception, and unfair business practices in the marketplace.

The FTC's dual missions complement each other in promoting consumer welfare, encouraging the disclosure of accurate information to consumers in the marketplace, which, in turn, facilitates free and healthy competition. What is sometimes lost in that discussion, however, is the vital role played by the Bureau of Economics in achieving both of those missions.

The Bureau of Economics provides guidance and support to the agency's antitrust and consumer protection activities. Working with the Bureaus of Competition and Consumer Protection, the Bureau of Economics participates in the investigation of mergers and alleged

anticompetitive, deceptive or unfair acts or practices. The Bureaus provide an independent recommendation on the merits of antitrust and consumer protection matters to the Commission. The Bureau also integrates economic analysis into enforcement proceedings and works with the Bureaus to divide appropriate remedies.

The Bureau of Economics also conducts rigorous economic analyses of various markets and industries. Some recent examples include its consumer fraud survey, which provided insight into the frequency of certain types of consumer fraud and how the incidence of fraud has changed over time. The Bureau of Economics conducts merger retrospectives that help the agency assess how a particular transaction affected the market, and allows the agency to evaluate enforcement decisions to improve future analysis and decisionmaking.

Finally, the Bureau also analyzes the economic impact of government regulation, and provides Congress, the executive branch, and the public with policy recommendations relating to competition and consumer protection issues. Recent examples include the Bureau's work on children's online privacy and protection rule and the endorsement and testimonials guides.

Analyzing the impact of regulations also is one of the main components of the FTC's modernization efforts. To ensure the Commission's regulations and compliance advice remain cost-effective, the agency has engaged in a systematic regulatory review program for the last two decades. Pursuant to that program, the Commission has rescinded 13 trade rules and 24 guides, and updated dozens of others

since the early 1990s. The FTC is committed to continuing its systematic regulatory review program in order to reduce burdens on the business community, while providing real benefits to consumers.

As the FTC enters its second century, it is an appropriate time to reflect upon whether the agency's enforcement and policy tools are being put to the best possible use to help the agency fulfill its mission. One of these tools, the Commission's authority to protect -- to prosecute unfair methods of competition as stand-alone violations of Section 5 of the FTC Act, is particularly suitable, in my view -- is a particularly suitable candidate for evaluation. The historical record reveals an unfortunate gap between the theoretical promise of Section 5 as articulated by Congress and its application and practice by the FTC.

The gap has grown large in part due to the persistent absence of any meaningful guidance articulating what constitutes an unfair method of competition. For at least the past 20 years, Commissioners from both parties have acknowledged that a principal standard for application of Section 5 would be a welcome improvement and have called for formal guidelines. With that goal in mind, I have offered a detailed policy statement articulating my own views on how best to modernize the agency's Section 5 authority.

The fundamental problem with the Commission's Section 5 enforcement in the unfair methods context is caused by a combination of the agency's administrative process advantages and the vague nature of the Section 5 authority governing unfair methods of competition.

This combination gives the FTC the ability in some cases to elicit a settlement even when the conduct in question may benefit consumers. This is because firms typically prefer to settle Section 5 claims rather than go through the lengthy and costly administrative litigation in which they are both shooting at a moving target and may have the chips stacked against them.

Indeed, the empirical evidence documents a near perfect rate at which the Commission rules in favor of FTC staff after administrative adjudication. The evidence also reveals that the FTC's own decisions are reversed by Federal courts of appeal at a much greater rate than those of general district court judges with little or no antitrust experience.

Formal guidelines would help the Commission's mission by focusing the Commission's unfair methods enforcement upon plainly anticompetitive conduct and provide businesses with important guidance about what conduct is lawful and what conduct is unlawful under Section 5. Indeed, the FTC has issued nearly 50 sets of guidelines on a variety of topics, many of them much less important to our mission than Section 5. The Commission can and should, in my view, provide similar guidance for its signature competition statute.

In closing, the FTC is committed to effectively updating and modernizing to achieve its goals of protecting consumers through its consumer protection and competition missions.

I am happy to answer any questions.

Mr. Terry. Thank you, Commissioners and Chairwoman. I

appreciate your testimony. And at this point it is the question-and-answer part where we get to do a little deeper dive into your testimonies. And as I telegraphed in my opening statement, and when we had time to chat beforehand, I am concerned about the CFPB having what appears to be substantially similar jurisdiction, although without the maturity of 100 years of testimony and cases to work from.

So in regard to the FTC's interpretation and guidance on how it interprets unfair and deceptive, are there any indications that they will or will not -- the CFPB is going to follow any of the historical interpretations by the FTC, Chairwoman?

Ms. Ramirez. Chairman, let me say that we have worked very closely with the CFPB. We entered into a Memorandum of Understanding back in January of 2002 -- 2012, excuse me, in which we set out processes and procedures specifying how we would coordinate to avoid duplication of effort, and to avoid double teaming any one company. I also think that -- so we consult in connection with enforcement actions as well as rulemakings and other policy work.

The statutory definition of unfairness tracks -- that is in Dodd-Frank tracks what is in the FTC Act, so I do believe that the CFPB will be informed by the relevant case law, as well as the relevant work that the FTC has engaged in when it comes to its use of its --

Mr. Terry. Do you have any experiences so far, though, whether to determine if CFPB will use or will not use those historical precedents from the FTC?

Ms. Ramirez. At the end of the day, I think the agency will do

what is appropriate under their statutory --

Mr. Terry. That is what I am afraid of.

Ms. Ramirez. -- authority. However, again, I do believe that they will be informed by the work of the FTC. We cooperate very closely, and we certainly, you know --

Mr. Terry. But no evidence of that that you can point to?

Ms. Ramirez. I haven't seen any evidence that they are doing anything inappropriate.

Mr. Terry. Okay. And I want to dive down a little deeper on the duplication, because some of the fears of the entities that are under -- particularly financial institutions where there may be an FTC review, let us take mortgages, for example, or debt collection, that it could be under both the jurisdictions, and there is an FTC pathway, and then there is going to be a duplication or maybe even a slightly different standard under CFPB.

You mentioned that you kind of have an agreement on jurisdiction. Can you give us more details regarding the -- that agreement on how you are going to work through those shared jurisdictions?

Ms. Ramirez. I wouldn't call it an agreement on jurisdiction, but rather it is an agreement to put in place processes and procedures to ensure that there is no duplication, and to ensure that we collaborate effectively and efficiently. We did -- under Dodd-Frank the FTC lost certain rulemaking authority relating to the financial sector, which now is housed and is under the province of the CFPB. So it is really on enforcement matters where we are primarily

collaborating. And, again, we make a great effort and we are in contact with them on a regular basis to ensure that we are both effective agencies.

And let me also just say that we have a very strong history and a good track record of working with sister agencies to collaborate and have shared jurisdiction.

Mr. Terry. Well, but CFPB is, A, new, and, B, has been given a wide berth without too many regulatory barriers to that jurisdiction. And one of the issues that we have discussed is on their unfair and deceptive actor or practice guidance that seems like it may be different than FTC.

Have you worked with the CFPB on the issuance of their own use of --

Ms. Ramirez. It is not a topic that I have addressed with them directly. We, of course, have our own policy statements addressing unfairness and their deception authority.

Mr. Terry. Right.

Ms. Ramirez. Again --

Mr. Terry. You haven't had any conversations --

Ms. Ramirez. I personally have not engaged on that particular issue, but I know that staff is in discussions, and this is no doubt a subject that was addressed.

Mr. Terry. Okay, staff are in discussions.

Any of the other three Commissioners in 29 seconds have any concerns with CFPB?

Ms. Ohlhausen. Chairman Terry, I do think that it is important that the FTC and the CFPB try to interpret and apply similar authority in a similar way. So I completely agree with what Chairwoman Ramirez said.

The CFPB has not had the enforcement history that the FTC has had thus far, but I am concerned that in one of the complaints that they did issue, they did seem to apply unfairness in a very -- possibly in a very broad manner to reach pricing in particular. So if that were to be an actual representation of their enforcement position, that would create concerns for me down the road, because I don't think that is consistent with how the FTC is interpreted.

Mr. Terry. And I appreciate that.

One last question, Chairman: Do you want to move out of your building?

Ms. Ramirez. No, we do not.

Mr. Terry. All right. Thank you.

I now recognize the ranking member for 5 minutes.

Ms. Schakowsky. Thank you, Mr. Chairman.

I first want to correct a word in my opening statement. I mistakenly said that the FTC has fought for pay-for-delay. It has actually fought against pay-for-delay. I wanted to clarify that.

But I did want to ask more questions about pharmaceuticals. Pharmacy benefit managers, or PBMs, are middlemen between insurers, drug manufacturers and patients, as well as to negotiate discounts and rebates with pharmacists and drug manufacturers to lower the cost of

medicines for patients. In 2005, the FTC conducted an analysis of competition among PBMs and determined the market was competitive.

In the wake of the 2005 report, there have been a number of large PBM mergers, either mergers between PBMs or vertical mergers between PBMs and pharmacies. CVS Caremark was created by the merger of Caremark Rx with AdvancePCS. Last year the FTC allowed the PBM giant Express Scripts and Medco to merge. Now the new Express Scripts and CVS Caremark account for more than 80 percent of the PBM market.

So, Commissioner Brill, I want to ask you a question. Given these recent PBM mergers, is it perhaps time for the FTC to revisit the PBM market to ensure that it remains generally competitive and free of pervasive anticompetitive behavior?

Ms. Brill. Thank you, Ranking Member Schakowsky.

I have had a long history dealing with PBMs at the State level, as well as at the Federal Trade Commission, and I have been involved with State laws and State efforts to enact laws to increase transparency around PBMs. This is an issue where some of the States have had an intellectual disagreement with the traditional position of the Federal Trade Commission.

I think that it is important to examine the ways in which PBMs do operate and to ensure that they are being as transparent as possible, yet still maintaining competition with respect to their clients; that is, us, employers, whether large or small, or other types of entities that hire PBMs.

With respect to concentration in the market for PBMs, as you know,

I dissented in the Commission's decision to allow the most recent merger to go forward, and the reason I dissented is that I felt the parties said themselves that they did not need to merge in order to gain any further economies of scale. And as a result, I was looking at their other activity, and I saw some evidence of coordination, and I worried a great deal about coordination in this market.

And as a result, at the close of the case, I did suggest that it would be appropriate for the Federal Trade Commission, given what our resources are, given the other issues that we have to examine, for instance, patent assertion entities, patent trolls, if you will, and others, that if we do have the resources, I think it would be appropriate to take a look at concentration in the PBM industry and whether or not some of the concerns that I have seen are going to bear fruit. And that would be something that would probably -- should take place not necessarily right now, but maybe in a few years.

Ms. Schakowsky. In a few years.

Ms. Brill. A year or two, yes. I think we need to see how the market matures, given the now even greater concentration in the market.

Ms. Schakowsky. Chairwoman Ramirez, we have heard from experts that there are particular concerns in the area of specialty pharmacy where patients are using more expensive drugs with more complicated treatment regimens that require special attention from pharmacists that are specially trained.

Do you have any concerns about the impact that the mergers will have on patients' choice of specialty pharmacists?

Ms. Ramirez. We are aware of the concerns that have been raised in connection with the merger that you just mentioned, Express Scripts and Medco. This was an issue that we looked at very closely. We issued a closing statement in which we explained that we did not believe that there were any adverse impacts on the availability of specialty drugs that would result from the merger, and I believe that that is the case. However, we are aware of the concerns, and this is going to be an area that we will continue to look at closely.

Ms. Schakowsky. I am going to see if I can get in one more question on the privacy front.

Really quickly, I wanted to ask you, Chairwoman Ramirez, I agree with the general conclusion of your November 19th workshop that the Internet of Things brings great potential for innovative, useful technologies, but also new challenges. At the workshop you stressed that companies taking part in the new Internet of Things ecosystem have a great responsibility to, quote, "build in consumer privacy protections from the outset."

Could you please address why you believe that this approach to data collection, where privacy is hard-coded into new technologies, is the right one?

Ms. Ramirez. This is an approach that the Commission has advocated since we issued a privacy report in March of last year. We advocate three broad principles that we believe should be -- are good best practices for companies to abide by. That includes privacy by design, which means that companies ought to think about and incorporate

privacy protections as they develop products. I also think that it is important to provide both simplified notice and choice so that consumers can exercise greater control over their personal information. And then finally, it is also critically important that companies be open and transparent about how they collect and use personal information from consumers.

Ms. Schakowsky. Well, we are following up as a committee on that as well, so we look forward to working with you.

Mr. Terry. Appreciate that. And there may even be more privacy questions from our gentlelady from Tennessee. You are now recognized for 5 minutes.

Mrs. Blackburn. Thank you, Mr. Chairman, and I will stay right with that line of questioning.

Commissioner Brill, let me come to you on the Internet of Things issue, and this is something as a committee and a working group that we are looking at. And I have to tell you, I was a little bit, I guess, befuddled would be the word about the FTC's intended approach to the Internet of Things, and I would like for you to speak to this.

You wrote a New York Times piece saying the FTC should guide the development of the Internet of Things, and you did that 2 months before the FTC's workshop on that topic. And I would like to know if you think it was appropriate to write such a piece when you were holding an exploratory workshop, and, therefore, now some people have come forward and said that your workshop was just outcome driven. You were meant to lay the groundwork for new regulations, and so is this a good

approach, or should you all be listening and learning from these workshops and those that are participating in that before trying to drive policy in the New York Times on very complex and dynamic technologies?

Ms. Brill. Thank you for the question. I appreciate being able to respond to that.

Yes, I think it was very appropriate for me to place that piece in the New York Times. I was asked by the New York Times to write a very short piece about what some of the issues around the Internet of Things were, and I wrote the piece to raise questions about the kinds of things that I was individually thinking about.

Mrs. Blackburn. So you did it to raise questions and not to drive outcomes?

Ms. Brill. Absolutely not.

Mrs. Blackburn. So you did not want to predetermine what the outcome from the workshop would be?

Ms. Brill. Absolutely not. And I think a close and fair reading of my piece would show that it is raising questions, and it is certainly not --

Mrs. Blackburn. It has raised questions for some of us, but we want to make certain, and this is one of the reasons we are looking so closely at the Internet of Things and privacy.

I want to move on with the time that I have. Commissioner Wright, I would like to come to you. Can you tell me why antitrust is a better way to address net neutrality concerns and why you think the FTC is

the appropriate agency to handle the so-called net neutrality bucket of issues?

Mr. Wright. Absolutely, and I appreciate the question.

With respect to the concerns raised in and around the net neutrality space, in general most of these concerns involve what antitrust economists and lawyers call vertical agreements or vertical contracts, contracts between complement providers. And these are the types of contracts which antitrust law and antitrust agencies like the FTC have looked at and evaluated and developed a framework through the common law under the Sherman Act for nearly 100 years; developed a set of tools for identifying which of these agreements pose problems and actually harm consumers, and which can be beneficial. And quite a few can be beneficial to consumers rather than harm.

So the FTC and the antitrust institutions generally, I believe, have a framework that, from an analytical perspective, is asking the right questions: Which of these agreements will help consumers? Let us allow the consumers to get the benefits of those. Which of these will harm? Let us investigate further, bringing enforcement action with respect to those agreements. That is precisely the framework that we have, and I have argued in my personal capacity that it is a better framework.

Mrs. Blackburn. Okay. Let me stop you there. Just a yes or no. In your opinion, has the FTC ever really explained what its unfair methods of competition covers that antitrust does not?

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Mr. Wright. No.

Mrs. Blackburn. Thank you.

Chairwoman Ramirez, if I could come to you. I have got a question on Magnuson Moss, that warranty act, and I am about to run out of time on this, and I want to be sensitive to the clock, but I have some questions on this related to the tying prohibition, and I know that it has been nearly two years since the release of the request for comments and three years since the first complaint had been filed with the FTC by the aftermarket groups and there has been no further comment and no public action taken by the FTC. So, since we are about out of time, if you would submit to me where you are on that, I would like to know if you have an anticipated timeline for the review for that, for the complaints and the answers to those from the aftermarket groups.

Ms. Ramirez. Well, let me just say quickly that we do anticipate completing that review in the coming year, and I am happy to provide you more detail about the status of that.

Mrs. Blackburn. I appreciate that.

Thank you so much.

Mr. Lance. [Presiding.] Thank you very much.

The chair now recognizes the Dean of the Congress, Mr. Dingell.

Mr. Dingell. Mr. Chairman, I thank you for your courtesy.

I note that the agency is approximately 100 years old, for which

I extend my congratulations. I want to particularly welcome the commissioners, especially Chairwoman Ramirez. I have some questions which I hope will be answerable in the yes or no.

To you, Madam Chairman, would consumers and industry benefit from having one Federal agency enforcing a uniform set of national data breach notification requirements? Yes or no.

Ms. Ramirez. Yes, I believe so.

Mr. Dingell. Thank you, Madam Chairman. Now, in your opinion, should that agency be the Federal Trade Commission?

Ms. Ramirez. Yes.

Mr. Dingell. I happen to concur. Now, Madam Chairman, provided they are strong enough, should Federal data breach notification requirements supersede State requirements? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, should State attorneys general be allowed to enforce such requirements? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, does the Commission believe that a violation of Federal data breach notification requirements should be deemed an unfair or deceptive act or practice in commerce, thus subject to the commission's authority under section 18(a)(1)(b) of The Federal Trade Commission Act? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, would a uniform Federal data breach notification law enforced by the Commission as well as State attorneys

general provide a significantly greater level of protection for consumers than that which now exists? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, does the Commission believe a business should notify consumers of a data breach within a reasonable time certain provided the Commission may extend such time based on a reasonable demonstration of necessity by a business? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, should a data breach occur, do you believe a business should be required to notify credit reporting agencies without unreasonable delay?

Ms. Ramirez. Yes, I do, particularly if the breach involved Social Security numbers.

Mr. Dingell. Thank you, Madam Chairman.

Now, I understand the Commission is currently conducting a study on data brokers, including how they collect information about consumers and consumers' ability to dispute the veracity of such information. Do you anticipate that the Commission will complete that study in the near future? Yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Madam Chairman, does the Commission believe any uniform Federal data breach notification requirements should include a safe harbor for businesses subject to mandatory risk assessments to be submitted to the Commission? Yes or no.

Ms. Ramirez. I am a bit unclear as to how the safe harbor would

work, so I will defer an opinion on that.

Mr. Dingell. Do you want to submit your further thoughts at a later time?

Ms. Ramirez. That would be terrific. Thank you.

Mr. Dingell. Madam Chairman, does the Commission believe that it would require additional authorization of appropriations in order to enforce uniform Federal data breach notification requirements?

Ms. Ramirez. No.

Mr. Dingell. Now, Madam Chairman, should the Commission be permitted to promulgate rules and regulations appropriately tailored for the enforcement of any uniform Federal data breach notification requirements subject to The Administrative Procedure Act, yes or no.

Ms. Ramirez. Yes.

Mr. Dingell. Thank you, Madam Chairman. Your responses have been most helpful.

Mr. Chairman, I look forward to working with you and my Democratic and Republican colleagues to write a commonsense law to establish uniform data breach notification requirements. The administration has proposed a sound basis for moving forward in this particular regard and I note that similar such legislation has been proposed and even considered by this committee in successive recent Congresses. I believe we should avail ourselves of this opportunity to do thorough bipartisan work for which this committee has been traditionally known under the leadership of yourself, my old friend Mr. Barton, and, of course, our current Chairman, Mr. Upton.

I thank you, and I yield back one second.

Mr. Lance. Thank you very much, Mr. Dingell.

The chair now recognizes the chairman emeritus of the full committee, Mr. Barton of Texas.

Mr. Barton. Thank you, Mr. Chairman.

The FTC has made numerous revisions to the current law on children's online protection, the COPA Act. Most recently, about this time last year, the FTC had a rulemaking that modified the list of personal information that can't be collected without parental notice and consent. It closed a loophole that allowed children directed apps and Web sites to permit third parties to collect to personal information from children through plug-ins without parental notice and consent. It extended the COPA rule to cover persistent identifiers that recognize users over time from across different Web sites or online services. It strengthened some data security protections by requiring that covered Web site operators and online service providers take reasonable steps to release the children's personal information only to companies that are capable of keeping it secure and confidential. And it strengthened the FTC's oversight of self-regulatory safe harbor programs.

Having done those things, does the FTC or would the FTC support or at least consider supporting additional protections such as are included in a proposed piece of legislation that myself and Congressman Rush of Chicago have offered, the Children's Online Protection Act of 2013?

In other words, in spite of what the agency has done, do you support even more secure privacy for our children? I will start with the chairman and then go right down the line.

Ms. Ramirez. I do support the aim of giving more control to teenagers and children over their personal information, so I am generally supportive of that, yes.

Ms. Brill. And I, too, am supportive of the goals of your bill and particularly am interested in exploring the feasibility of the eraser button concept that you have incorporated in that bill.

Mr. Barton. Thank you.

Ms. Ohlhausen. To echo my colleagues, I definitely support the aims of the bill. I would like to get more deeply into the issue of what, given the COPA rule revisions and some of the self-regulatory options that are out there, what remains to be done in the market to extend those kind of protections.

Mr. Barton. Thank you.

Mr. Wright. I echo the sentiments of my colleagues on the Commission that I am certainly supportive of the goals of the bill and would certainly be open to considering further details.

Mr. Barton. Good. Well, we have, under Chairman Terry's leadership, he has created a privacy task force, a bipartisan task force, Chairwoman Marsha Blackburn is very active on that, as I am I, and hopefully, we will be holding a legislative hearing on Mr. Rush's and my bill sometime in the spring.

Another privacy question, and this one is not quite as obvious,

but we heard yesterday Amazon's efforts to use drones to deliver packages. It opens up a whole new realm of privacy issues if that does occur. Most of the attention has been focused on what the FAA would do. But my question to the FTC, if and when companies like Amazon.com want to use drones commercially in the public sector, does the FTC have a role to play in issuing privacy guidelines? I will start with the chairwoman.

Ms. Ramirez. Yes, thank you. Let me say that, as was discussed earlier, I do believe that we have a role to play and the agency has been very active, of course, when it comes to privacy. But in addition to enforcement work that we have done pursuant to our Section 5 authority, we have also engaged in extensive policy work in this area. I mentioned earlier the policy framework that the Commission issued a year and a half ago, and I would say that for any emerging technology, we believe that it is an appropriate lens through which companies should examine any product or service that implicates individual privacy.

At the same time, let me also note there are limits to what the FTC can do under our authority, and I do believe, I personally am supportive of baseline Federal privacy legislation because we can't do everything when it comes to privacy.

Mr. Barton. Anybody else?

Ms. Brill. I agree wholeheartedly with what the chairwoman just said, and I think in particular our report in 2012 outlined concepts that are applicable with respect to different technologies, privacy by design, transparency, simplified notice in choice. These are the

kind of concepts that could be imported into the drone framework. But, again, it would be helpful to have clear lines of authority with respect to that issue.

Ms. Ohlhausen. I think this is a great example of how new technologies are surprising us, and it is hard to forecast where things will be going. So I think the FTC's approach of having clear principles of deception or unfairness authority that we have applied very actively in enforcement, coupled with using our policy tools to get an idea of what new technologies are occurring, what particular risks and benefits they may offer and getting a good understanding of that and perhaps issuing some sort of guidance based on really having a full knowledge of what that new technology is, is a very appropriate path, one we have followed in other technologies. And, who knows, maybe we will have a workshop on drones sometime in the future.

Mr. Wright. I will note very quickly just that I had not had the opportunity to think about drones and packages in this job until yesterday, so I don't have much profound to say about what our approach might be, but I want to echo my colleagues' sentiments here and particularly Commissioner Ohlhausen. One of the advantages in our approach, both on the competition and the consumer protection side, is these principles coupled with a framework and the tools that allow us to get at what the consumer welfare implications are, what the cost and benefits of various approaches are, is in the intellectual blueprint of the agency and I think is very helpful for addressing new and sometimes surprising technologies.

Mr. Terry. [Presiding.] Thank you.

And at this time, I recognize the gentleman from Maryland for his 5 minutes.

Mr. Sarbanes. Thank you, Chairman Terry, for pulling this hearing together, and I want to thank the panelists. Listening to your testimony, it is amazing how broad the jurisdiction of the FTC is and your testimony has given me confidence certainly that that jurisdiction is being managed in an efficient and fair way. So thank you for your testimony today. I have a couple of broad questions to ask, but before that, I hope you would indulge me in sort of a parochial question.

Chairman Ramirez, we have exchanged some correspondence relating to ongoing review by the FTC of a merger of two large funeral home companies, SCI and Stewart Industries, and I have gotten a lot of inquiry and communication, as I think the FTC has as well, from members of the Jewish community in the greater Washington, D.C. area who have expressed some concern that that merger might reduce the access of the Jewish community to certain affordable funeral services that comport with rights and rituals of the Jewish faith.

I just wanted to ask you while I had you here today, can you tell me if and how the FTC is taking those concerns into account as this merger is being reviewed and evaluated?

Ms. Ramirez. I appreciate the concerns. Unfortunately, I can't comment on an ongoing investigation. But what I can say is that we are certainly aware of your concern as well as a similar concern that has been expressed by others. And that is really all I can say at this

time.

Mr. Sarbanes. I appreciate that. I would urge the Commission to give serious attention to the concerns that have been expressed. Right now, these special services are available on an affordable basis. It would be a shame for that to fall by the wayside as a result of the merger. So I thank you for your attention to that.

I wanted to ask, given that this is kind of an overview hearing as we come up on the 100th anniversary of the FTC, a couple of questions about, and anybody can answer this, one relates to the kind of rhythms of your jurisdiction, depending on the state of the economy. So I would presume that when times are bad, or perhaps maybe that is not the case, maybe it is when things are getting better and certain people have resources that they didn't otherwise have, that the kinds of scams you see increase, the number of scams increase. So I would be curious to get some response to that question.

Also, as you know, there is a demographic wave coming at us of seniors and I would imagine as a result of that you are seeing obviously many more seniors coming into a certain cohort, and I imagine the kinds of scams that are being perpetuated against our seniors is increasing as a result of that because there is also a tremendous amount of resources there. So if you could speak to either or both of those issues, those who would feel comfortable responding, that would be great.

Ms. Ramirez. Why don't I lead things off, if I may. Unfortunately, fraud flourishes at all times, when the economy is

distressed as well as in good times, but we do see differences in the types of fraud. So, for instance, over the last several years, we have seen particular frauds that have been targeted at financially distressed consumers, and it does impact seniors and other underserved communities, so we have been particularly vigilant when it comes to that and we place significant resources in addressing those times of frauds. Those continue, but we are seeing them a bit diminished in light of the economic recovery. But, unfortunately, there is ample fraud, regardless of what the economy looks like, and we are vigilant at all times.

With regard to your question about seniors, we are very much attuned to scams that may affect seniors in particular and that does include work at home scams, prize and lottery type of scams. We are attuned to those issues. We held a workshop earlier in the year addressing identity theft as it pertains to seniors. So we are working with other enforcement partners as well as with members of the community, community organizations, AARP, to do what we can both to press forward with enforcement efforts as well as to educate seniors with how to avoid fraud.

Ms. Ohlhausen. Just to augment what the chairwoman said, I wanted to mention one of the great strength that I see that we have at our disposal at the FTC is how we are able to collect and analyze data to help drive our enforcement priorities. And your questions brought to mind how we use Consumer Sentinel, which is a database that we collect complaints so we find out where particular frauds or what

types of particular frauds are trending, so we can turn our enforcement tools that way. And also we did a fraud study last winter that looked at what groups were vulnerable to what particular frauds, and this included seniors. And these are both great tools for us to better target our enforcement efforts to particular groups that are experiencing certain problems.

Mr. Sarbanes. Thank you very much.

I would love to get a copy of that fraud study if it is available. Thank you.

Mr. Terry. Thank you.

Now the vice chairman of the subcommittee, Mr. Lance, you are recognized for 5 minutes.

Mr. Lance. Thank you very much, Mr. Chairman.

As I understand it in the antitrust context regarding adjudicative process, first, there is the ALJ, then an appeal to the Commission, and then finally to the Federal courts. Is it true that the FTC staff has never lost a case before one of its ALJs or an appeal to the Commission?

Ms. Ramirez. I think the statistics I think that have been stated in this arena really can be misleading. I think it is a much more nuanced picture. There have been times when both the ALJ takes a different view than the staff that is prosecuting a case. The Commission has also taken a different view on certain claims as regards the arguments that are being made by complaint counsel.

Mr. Lance. So you have lost? The staff has lost?

Ms. Ramirez. With regard to certain claims, yes. But you need to look -- you can't just look at the case as a whole, but you need to look at and evaluate particular claims. Let me just also observe that before a matter even gets to the administrative process, there is a lengthy and thorough investigation that is conducted by staff. Then there is a decision by the Commission as to whether or not to move forward with a particular complaint. So that ends up really weeding out any weak cases.

Mr. Lance. And this process is different from the process at DOJ. Is that accurate?

Ms. Ramirez. We have the ability to use both the Federal court or to use in the alternative the adjudicative process. The Department of Justice only has the avenue of the Federal court.

Mr. Lance. Would any of the other commissioners like to comment? Yes, Mr. Wright.

Mr. Wright. I want to make one small correction, but I think it is one that will help us focus on the right issue. The statistic, it is not whether the staff wins or loses in front of the ALJ. The record in front of the ALJ is actually fairly similar to what you get in Federal Court, a little bit different. But the FTC staff wins and loses cases in front of ALJs, either as Chairman Ramirez was saying, on a whole count, on some counts, on part of the case, all of the case. The statistic that I think raises some questions and that I alluded to in my testimony which I think is interesting with respect to the process is that when the ALJ decision has been reached, the historical trend

for the past, at least past couple of decades, has been if the ALJ rules in favor of the FTC staff, the Commission affirms. If the ALJ rules against the staff, the Commission reverses. Now, there are nuances in the data, but the rate is near 100 percent.

So there are potential explanations of the differences, and I certainly don't have any qualms to folks raising them. But 100 percent is an impressive number, and it is a number --

Mr. Lance. It is indeed.

Mr. Wright. And it is a number quite different from the processes and institutions that folks face when they go into Federal Court, and I think there is a question about what to do about that.

Mr. Lance. Thank you. I am sure we will continue to have a discussion on that.

Last week, the Wall Street Journal noted the Commission opened an investigation of the Music Teachers National Association and found its longstanding code of ethics contained a provision that members should not seek to poach other members' clients, and I understand this is currently under investigation and I am sure you can't comment on the specific facts of that situation. But to the chair, what is the FTC's jurisdiction over nonprofits and does that include nonprofit membership associations?

Ms. Ramirez. We do have jurisdiction over nonprofits where the membership and the trade association would be organized for the purpose of monetary gain and profit for its members, so in that circumstance, we would have jurisdiction. And I can't comment on the specific --

Mr. Lance. Yes, I realize that. Does the FTC have any evidence that the code of ethics hurts consumers or has raised prices?

Ms. Ramirez. Again, I can't comment on that particular --

Mr. Lance. I am not asking on that case. Generally speaking.

Ms. Ramirez. Let me just say, generally speaking, the FTC is concerned when there are code of ethics that amount to agreements not to compete. That would be a fundamental violation of the antitrust laws. Our job is to promote vigorous competition, and that is what we aim to do.

Mr. Lance. I see. Any other members like to comment on that?

Thank you. With 10 seconds, let me say when I was in college at the fraternities, you were not supposed to poach on your fraternity brothers' girlfriend. You were not to ask her for a date.

Mr. Terry. That is a different type of trust.

Mr. Lance. Thank you very much, Mr. Chairman.

Mr. Terry. So, with that enlightened statement, I will recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. McNerney. Thank you, Mr. Chairman.

I just want to say your presentation was well-crafted and coordinated, I appreciate that, and it shows that you are working together, which is important in terms of protecting consumers and carrying out the tradition of stopping the old -- before the Commission -- "let the buyer beware" philosophy that ruled this country. So thank you for carrying on that great tradition.

Commissioner Brill, you mentioned the privacy issue. What are

one of the things that I am working with Mrs. Blackburn and Mr. Welch and other members of our privacy working group was that the companies are telling us that if they have specific policies that are stated and that they don't follow those policies, that the Commission will go after them, and that that is the best thing that could happen as opposed to us imposing some sort of regulatory framework over privacy. Would you comment on that? Do you agree with that?

Ms. Brill. I think it is important that we police whether or not companies are abiding by their commitments to consumers that are contained within privacy policies, so I do think that is an important part of what we do. However, there is another aspect of what we do which is our unfairness jurisdiction, which I think is equally important. And we have brought many cases, dozens of cases, involving whether or not companies' practices, leaving aside what they state what they are going to do, whether or not their practices are harmful to consumers and should be subject to our jurisdiction.

I have actually had conversations with companies, tech companies, that have said that they think that our unfairness jurisdiction is important because it at least has a measure of harm in it. If you look at our unfairness statement, there is some aspect of harm that we have to demonstrate.

So I think it is important actually to have both aspects of our jurisdiction, not just focusing on whether or not a company is abiding by its privacy policies, which is an important aspect.

Mr. McNerney. Thank you.

Ms. Ohlhausen, I want to talk about patents for a minute. You mentioned the word "patent assertion entity." Another more derogatory word that has been going around lately is "patent troll." I am a patent holder, innovations that I developed, and I have a suspicion that there is a large company that is violating my patent, that is infringing on my patent. I talked to another engineer that had a similar situation in the past, and he said, well, it is going to cost you about \$5 million to \$10 million to go up against the companies that do this. And he says, I have some investors I will put you in touch with if you want to pursue that.

Well, obviously, I am not in a position to do that. But I think we need a balanced approach in terms of going after patent assertion entities to make sure that they have a certain amount of protection for patent holders and innovators. Would you comment on that, please?

Ms. Ohlhausen. Yes. Thank you. You raise a very important point, which is that our patent system, it is important that there are protections for patent holders and that one of the things that we need to keep in mind, and I am glad the FTC is doing a study on this, is to get a very clear sense of what problems are really being created and what isn't a problem. So it is important that the patent holder does the have the ability to protect its rights, and sometimes to protect the small patent holder, they would be able to sell their patent to another entity that might be better suited to capitalize on it, to enforce it, to create around it.

So that is one of the reasons why I was very supportive of the

agency doing our patent assertion entity study, to get a better idea of what is really happening in the market and what the interests are. Because we do need to proceed very carefully in this area to make sure that the rights of particularly small patent holders are protected.

Mr. McNerney. Okay. Thank you. Mr. Wright, one of the things you mentioned was the analysis of the impact of government regulations on business, and that is something that I think on both sides of the aisle we are quite interested in. We don't want too much regulation, but we want a level playing field for good competition.

What do you see the long-term impact and long-term goal of that study and of that work is with the agency?

Mr. Wright. I think for me the right way to think about that study from the FTC's perspective is that it is an ongoing commitment. The commitment to continually review our rules and regs is something that we do; we do on a regular basis; we have done for 20 years. It involves older regulations that are no longer relevant that we pared down -- I think I gave the numbers of 24 rules and 13 regs over just the last 23 years or so -- in addition to updating rules that we have that are still relevant moving forward.

So what we do, and I think the economic capacity in the agency to do, is internal cost-benefit analysis to make sure that we are keeping the rules that have a high rate of returns for consumers, that we are getting rid of the ones that have zero or negative rate for consumers, and that we are continually asking those questions. I think that is a long-standing commitment of the agency, one that will continue

and one that has been very successful.

Mr. McNerney. Does that effort apply to other agencies, like the EPA or other agencies that are having an impact on businesses out there?

Mr. Wright. If you mean whether we review their regs, no. But I am not very familiar with what the other agencies are doing in terms of their own review, of course, or how they go about conducting any internal evaluation of their rules.

Mr. McNerney. So this only refers internally to the FTC.

Mr. Wright. That is the only thing I can speak to with any knowledge.

Mr. McNerney. Thank you.

Mr. Terry. I think we will step stipulate that the FTC probably does a better job with that than any other.

Mr. Wright. Here, here.

Mr. Terry. At this time I recognize the gentleman from Mississippi, Mr. Harper.

Mr. Harper. Thank you, Mr. Chairman, and thank you each for being here and providing this insight into a lot of important issues and responsibilities that you have.

If I may start with you, Chairwoman Ramirez, and you touched on this earlier, at least on the workshop issue and some other things that were ongoing, but today it is no secret that the Internet has opened up a lot of new doors and provided new tools for a lot of fraudulent and predatory businesses to prey on consumers. You see it in the form of fraudulent work at home programs, which you have mentioned,

fraudulent advertising of such things as weight loss products, or fraudulent price promotions and others and many other scams through the Web that are most threatening to the American consumers this year.

As you mark and approach the 100th anniversary, is the Commission taking sufficient action to protect consumers from online scams, such as those fraudulent work-at-home programs?

Ms. Ramirez. I think we are doing an effective job of monitoring the marketplace when it comes to both our mission to protect consumers against fraud as well as guarding against anticompetitive practices. So, yes, we ultimately are constrained, of course, by the resources that we have. We are a small agency, but I think that we are doing an effective job.

Mr. Harper. In particular, I guess as a follow-up, what is the FTC doing to crack down on the deceptive use of Internet-based lead generation, in which email addresses are sold to people running multilevel marketing distributions at premium prices, and in fact, the so-called lead is simply the email address of someone who has clicked on to a Web site and maybe isn't a bona fide potential customer?

Ms. Ramirez. I think your question implicates a number of things we do. One includes the work that we are doing in connection with both privacy and data security. I personally have advocated for the implementation of a do-not-track system that would allow consumers to opt out of online tracking. I think it is just fundamental that consumers ought to have more control over their data. We are also, again, vigilant when it comes to any other promises that are not

maintained and fulfilled by companies.

So, again, I think we are doing an effective job. We are paying particular attention to the mobile arena where we see a lot of scams as people migrate to increasingly the use of smart phones and tablets.

Mr. Harper. And, of course, it is a challenge to stay ahead of a lot of those abusive practices and stay up on the technology.

Ms. Ramirez. It is a challenge, but that is another reason why we hold workshops and we are also constantly engaging with the business community as well as with consumer advocates, so that we make sure that we learn about what is happening on the ground and stay attuned to all of those issues.

Mr. Harper. And if I could shift gears a little bit, chairwoman, and ask you to elaborate on the FTC's expertise and experiences with privacy and data security, do you think the FTC has unique expertise for protecting information collected and/or stored online, and are you satisfied with where you are on that?

Ms. Ramirez. We certainly are the primary law enforcer in this arena in the United States. I think we are doing a he effective job with the tools that we have under Section 5. But, as I mentioned earlier, there are limits to what we can do, and I personally believe it would be appropriate for Congress to enact baseline Federal legislation in the privacy arena.

Mr. Harper. Commissioner Brill, if I may ask you, do you think the FTC has enhanced companies' data security efforts through the agency's enforcement actions and, if so, give us an example.

Ms. Brill. Sure. Thank you for the question. I do believe that our enforcement work has raised the issue with respect to data security and privacy protection for companies, and I think, as a result, companies have really taken up the mantle and developed policies. They have put into place chief privacy officers, have brought them into the C suite in certain circumstances, and I think the privacy and data security issue has been enhanced with respect to corporate practices as a result of our enforcement work. So, yes, I do think that our enforcement work has played a key role in enhancing the issue in corporate America.

Mr. Harper. Thank you, and I yield back, Mr. Chairman.

Mr. Terry. At this time, we recognize Donna Christensen for your five minutes.

Dr. Christensen. Thank you, Mr. Chairman.

And welcome to the commissioners. It is great to you have here for this hearing. I want to ask some questions about Reclaim Your Name and data brokers.

Dozens and dozens of information brokers exist that have detailed profiles about each of us; data is collected, aggregated, analyzed and used and disseminated for a wide range of commercial practices. The Web site NextMark, for example, offers 60,000 customer lists for sale on topics that range from mundane and innocuous issues to more sensitive topics. There are consumer lists for sale that target people with addictions, mental illnesses, reproductive concerns, weight loss issues and dozens of other physical and mental health conditions. The

list is categorized by past purchase history, including so-called impulse purchases.

So, Chairwoman Ramirez, should there be categories of information, such as health conditions or sexual preferences, that should not be collected?

Ms. Ramirez. Thank you for your question. This is an issue that we addressed in our privacy report that we issued last year, and I believe that when it comes to sensitive information, health information would be among information that I would consider sensitive. I believe that consumers ought to have greater control and I think there ought to be an opt-in mechanism when it comes to sensitive information.

Dr. Christensen. Thanks. Can you also clarify why purchases of over-the-counter medicines at stores such as target and CVS are not protected by HIPAA?

Ms. Ramirez. HIPAA only provides limited protection and is only aimed at healthcare providers. So that is why we are particularly concerned about both online and offline collection of health information. We do think that it is sensitive information that ought to be especially protected.

Dr. Christensen. I agree. And often data collection is done without consumers' knowledge. For example, you might think you are sharing information with only your favorite store when you agree to carry a customer loyalty card, but that store often sells your purchasing habits to other stores and data brokers, and some data brokers have taken steps toward opening their data bases to the public.

However, in most cases, data brokers do not share their stockpile of information.

A recent Pew Research report showed that 68 percent of Internet users believe that current privacy laws do not provide adequate protection and 50 percent of users were concerned about the amount of personal information about them or us that is online. Based on these numbers, it is not surprising that most Internet users express that having control over their personal information online was important to them.

Commissioner Brill, can you elaborate on your Reclaim Your Name program and why it is so important for consumers and also for those who hold the data?

Ms. Brill. Sure. Thank you for your question. One of my chief concerns with respect to data brokers is that their practices are largely invisible to consumers. Consumers don't understand that when they go to WebMD or when they go to other online sites and provide sensitive health information, that that information may be culled and provided to others and may become part of a profile that then characterizes them as they move through the Web and, frankly, as they move through other transactions, whether online or offline.

This is an issue where I think much more transparency needs to be provided to consumers. I would like to see data brokers provide to consumers information about the types of information that they collect and to give to consumers information about the choices that consumers may have with respect to the data.

Chairman Ramirez referred to our 2012 report, and in that report, we talked about the need for giving consumers some kind of choice with respect to data that is used for eligibility decisions and whether or not consumers ought to be given the right to suppress information that is used for marketing decisions. The information won't go away, but at least to give consumers some kind of choice as to whether their data that is collected online and offline is used for marketing purposes.

I just believe that much more transparency needs to be brought to this issue, and I encourage and am working with the industry so they can provide these tools to consumers.

Dr. Christensen. Thank you, Mr. Chairman.

I yield back.

Mr. Terry. Thank you.

Now the chair recognizes the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. Olson. I thank the chair.

And welcome to all the witnesses. The topic of this hearing is "The FTC at 100: Where Do We Go From Here?" But before we determine where we go, let's take a look at where we have been.

The FTC was created on September 26, 1914, with one sole mission, to promote fair competition. It was a very different world in 1914. A couple of examples. Interstate commerce industry took a huge blow on September 7th when the last passenger pigeon, Martha, died in Cincinnati. Market access was changing dramatically. The Panama Canal was opening. The first steam vessel came through on the 7th of

January, and the first ship coming from the East Coast to San Francisco came through on August 7th. And the most important invention for the prosperity of my State, the patent for W.H. Carrier, who patented the air conditioner, happened on April 29, 1914. In 1938, the consumer protection mission was added to FTC's jurisdiction, but since that time, I have concerns that the enforcement actions are going beyond those congressional limitations.

I want follow up on some of the questions from the vice chair about the actions that the FTC has taken about the company that promotes -- a nonprofit that promotes music competition, the Music Teachers National Association, in the Wall Street Journal article. That raised a bright red flag for me.

I am looking at their Web site right now and per the Web site, it looks pretty innocuous. They have two missions: To provide guidelines for music performance competition and music composition competitions. They start out in the States. They have seven divisions across the Nation and finals in five categories: piano, string, chamber music string, chamber music wind, and woodwind.

Chairman Ramirez, in your written testimony, you state that one of the challenges facing the FTC is constrained resources and a growing workload, less money, growing workload. You also say that one way to mitigate this challenge is to, quote, "leverage resources through careful case selection."

Do you think that the action against the Music Teachers National Association, a nonprofit with 12 employees and a \$2 million budget,

is that "careful case selection?"

Ms. Ramirez. I can't address the particular matter that you have mentioned because it is a nonpublic investigation, but what I can tell you is that we will address it at an appropriate time. And I will say that I believe we do use our resources effectively. There are certain investigations that we are as efficient as we can with investigations when it is appropriate, and when parties also feel it is in their interests, we end up revolving them through consent orders and not having to litigate. But I do believe that we have used our authority quite effectively. We examine evolving markets every single day, and we are well equipped and well positioned to do so, and I think we do an effective job at promoting competition.

Mr. Olson. Commissioner Brill, Ms. Ohlhausen, Mr. Wright, do you have any comments about what the chairwoman said?

Ms. Brill. I agree with the Chairman.

Mr. Olson. Surprise.

Ms. Ohlhausen. I would just also like to mention, not commenting on any particular investigation, but the FTC has brought a series of these kinds of cases going back to the 1970s, and it has been across administrations, and one of our functions I think is to give guidance to the broader industry. So a particular case might be useful in that it gives guidance to a lot of other different associations across a variety of industries.

Mr. Olson. Thank you.

Commissioner Wright?

Mr. Wright. I concur with the chairwoman's comments. In general, I will say, with respect to, again not commenting on any particular case, but with respect to trade association guidelines and codes of ethics, the history of the Sherman Act, going back beyond the history of the FTC is replete with examples of price fixing arrangements that harm consumers dressed up in the guise of codes of ethics or trade associations. They are not uncommon cases in that sense and can establish an important principle in cases small or large that harm to consumers arising from price fixing, whether written down in a document or verbally committed to between competitors, are worthy of the agency's attention.

Mr. Olson. I am out of time. I yield back balance of my time. Thank you.

Mr. Terry. Thank you. At this time, let's see, oh, Mr. Welch.

Mr. Welch, you are recognized, cochair of the privacy working group. You are recognized for your 5 minutes.

Mr. Welch. Thank you, Mr. Chairman.

First of all, I want to thank all of you. The FTC, it is so important, as my colleague from Texas went through the history, 100 years and things have really changed. But it is a tough world out there for consumers. They really don't have an advocate. With I think computerization and with information, there is a lot of opportunities, but there is also an immense amount of power that can be consolidated in the marketers and in the market where in order to have competition that is fair, we need a very strong and a very cooperative FTC. So

I just want to thank each and every one of you for your service.

You are entrusted with this extraordinary responsibility to provide for fair competition, but that means that consumers have to be, obviously, their interests have to be respected. And it is really tough where technology has changed so many things and where, in this privacy working group that several of us are on, there is an enormous desire to maintain the benefits that come from technology, the choice and the opportunity and the ease of access and the market opportunities, but on the other hand balance that with protecting consumers who have no say over how they are treated frequently. So, I understand the incredible importance of your job, each and every one of you, and I am glad to see how well you work together.

One of the issues that has come up in the Privacy Working Group has been about the impact with the European Union and their reaction to reports about the acquisition of information through our own intelligence efforts. And one of the concerns that has been expressed to me by some of our companies that are major companies that are very important players in our economy is that some of these EU issues on the privacy question may actually start to interfere with their ability to have market penetration in the EU.

So I would actually be interested in hearing a little bit about your thoughts on that and what suggestions you would make for Congress to make certain there is a level playing field for our Internet providers. I want to get both sides of on this, but I would start with Commissioner Ohlhausen. Could you speak to that?

Ms. Ohlhausen. Certainly. It is an issue that has certainly been in the news a lot and the FTC through our Office of International Affairs in particular has tried to engage the Europeans quite actively on that. In fact, Commissioner Brill and I went to the Data Protection Authority Conference in Warsaw together just this past fall, and we got an earful on these issues.

One of the things that I think we have been able to do is to sort of make the case about we have the safe harbor provision, which really focus on interoperability between the European system and the U.S. system, and that has worked fairly effectively for a number of years. And I know personally I would be concerned if Europe were to depart from that because I think it could hurt competition. I think it ultimately could hurt consumers. So we have tried to engage with them to address some of their concerns, but also to maintain some of these important principles.

One of the things we have done over time at the FTC is for companies that have claimed that they are adhering to this safe harbor principle, we have brought enforcement actions against companies that claim they were adhering and haven't, and so we provide some important enforcement backstop to that.

Mr. Welch. Let me just ask Commissioner Brill -- thank you very much. I only have a minute.

But Commissioner Brill, a Vermonter, I am very proud of having a good Vermonter. I worked with you when you were in the Attorney General's Office, and you were good there, and you are doing a great

job here. If you could comment.

Ms. Brill. Thank you. So I have been working very hard to express to my European counterparts as well as Vice President Reding and others in the European Commission that the national security issues need to be separated from the commercial privacy issues. And I have been a very strong advocate of maintaining safe harbor, which is one of the tools, as Commissioner Ohlhausen mentioned, one of the tools that companies in the United States use in order to transfer data across the pond.

I have said to my European counterparts that safe harbor is one of the tools that we at the Federal Trade Commission use to protect, not only U.S. citizens but also European citizens. When we bring an enforcement action against Google and Facebook and we find out they have been violating the safe harbor, we can incorporate provisions that deal with these kind of safe harbor principles, and we have done so. So not only are we looking at the enforcement work that Commissioner Ohlhausen mentioned where people are falsely claiming to be members of the safe harbor, but in fact our entire privacy and data security agenda focuses on enhancing privacy and data security for citizens all around the world.

So I have been a very strong advocate of maintaining safe harbor. Having said that, as Chairwoman Ramirez said in a letter recently to Vice President Reding, there is always room for improvement. It is a good program. It works very well. There is room for improvement, and we will be having discussions about that.

Mr. Welch. Thank you. I have to yield back, but I think all of us would be interested in continuing to work with you on those issues. Thank you.

Mr. Terry. Yes, we would.

At this time, I recognize the gentleman from Kansas, Mr. Pompeo, for 5 minutes.

Mr. Pompeo. Thank you, Mr. Chairman.

Commissioner Ohlhausen, you recently delivered a speech, it was back in June, focused on the impacts and ramifications of potential privacy legislation. You said, quote, "I believe however that a voluntary self-regulatory process should operate without undue government involvement. Otherwise, industry may lose the incentive to participate and instead would take a wait-and-see attitude to see whether Congress would ever impose such requirements through legislation," end of quote.

A couple other folks have mentioned they are on the Working Group on Privacy. I am participating in that as well. I would be interested in your thoughts on how industry reacts when we even begin to discuss putting in place a top-down Washington-centered set of privacy rules on top of what is already out there today?

Ms. Ohlhausen. Thank you for your question. I think it certainly gets their attention when Congress starts to pay attention to these issues. I think that, you know, the FTC's approach of bringing our enforcement actions, bringing guidance, having discussions is helpful, but one of the things that I personally think we need to look

at is also what is happening in the marketplace, and are there options out there for consumers that would give them the choices that they are seeking in things like interstate advertising or targeting?

So I do have some concerns though that if, in particular, my agency were to play too forceful a role in what is supposed to be a self-regulatory process, that it interfere with the incentives of the different participants to come to an agreement on their own. So that is what I was expressing in that speech.

Mr. Pompeo. I appreciate that and I share your concerns. My observation, as I watch consumers, and I hear from them when they call our office. I run into them at church, at the PTA meetings, all of those wonderful places; they are very focused in privacy. In fact, we see it with the Affordable Care Act, right? We see customers very aware of the risk to their data when they put into this thing they call a computer on their desk.

I think private sector companies will compete, just like they compete on value and price and delivery and all of those things, I think they will compete on privacy as well, trying to match exactly what it is consumers want and deliver that to them in a way that they are deeply aware that that privacy is provided them. Otherwise, these folks will go someplace else. So I think that is self-regulatory system has an enormous opportunity to work and do a great good for consumers.

Chairwoman Ramirez, I wanted to ask you about an unrelated issue. The FTC recently released its draft strategic plan for fiscal years 2014 to 2018. However, the draft strategic plan section on consumer

protection did not mention weighing burdens on business or competition or assessing economic analysis or avoiding unnecessary burdens on innovation. In contrast to that, the strategic plan for the Commission's work on competition did address those issues. In fact, while the plan for the Bureau of Competition described its coordinated work with the FTC's Bureau of Economics, the plan's consumer protection section didn't even mention the Bureau of Economics.

Can you tell me going forward what steps have been taken and will be taken by the Bureau of Consumer Protection to analyze the impact of regulatory activities on businesses and competition, including greater integration and cooperation with the FTC's Bureau of Economics?

Ms. Ramirez. I appreciate the opportunity to address that question. It is something that we take into account in all of the work that we do, and Commissioner Wright touched on this in his opening remarks. We do have a Bureau of Economics that supports both our competition mission as well as our consumer protection mission, and I can assure you that in every matter we look at, enforcement, rulemaking, we are always -- I am getting the advice of our economists, and we are absolutely looking at both how to most effectively protect consumers but also looking at the costs that would be imposed on the business consumer.

Mr. Pompeo. Maybe, Mr. Wright, maybe you can tell me then why wasn't it even mentioned, why in the consumer protection provisions was the Bureau of Economics not even mentioned? It was expressly done so in the others. That can't be an accident.

Mr. Wright. I think it can be. I can't say much about how or why the asymmetry and the treatment of incorporated economics on the Bureau of Competition side and the Bureau of Consumer Protection side resulted in the draft. I can say from my experience at the agency and as somebody who cares very deeply about integrating economics into everything we do that it is certainly the case that on the Bureau of Consumer Protection side, we do in fact, with respect to law enforcement matters, with respect to rules and regulations, take the work of BE very seriously, the Bureau of Economics, very seriously, and I suspect that the asymmetry in the draft will be resolved upon the next opportunity.

Mr. Pompeo. That is great. Thank you.

Ms. Brill, go ahead.

Ms. Brill. I was just going to add it is an absolute oversight and that our strategic plan is out for comment, and we will make sure that we correct it.

Mr. Pompeo. Thank you very much. I appreciate those answers.

Mr. Terry. Thank you, Mr. Pompeo.

Now the Chair recognizes the full committee ranking member. The gentleman from California is recognized for 5 minutes.

RPTS MCCONNELL

DCMN SECKMAN

[11:56 a.m.]

Mr. Waxman. Thank you very much, Mr. Chairman, and I welcome the members of the Federal Trade Commission that are here today to make a presentation to us on the hundredth anniversary of the FTC.

I, in my opening statement, which I made part of the record, I acknowledged the fact that FTC has a dual mission, and it is a very important one for our economy, prevent business practices that are anticompetitive and also to protect consumers from unfair or deceptive actions. I want to ask you about an issue that is important to me because it involves a law that I helped write in 1984, the Hatch-Waxman Act, which created the generic drug system.

And Chairwoman Ramirez, in 2007, the law was changed so that the Food and Drug Administration made several landmark improvements to our post-marketing drug safety system. And one of the most important new tools that that law provided was a so-called risk evaluation and mitigation strategies, or REMS. One condition of a REMS that FDA could impose might include restrictions on how a brand manufacturer will distribute and sell a particular product. For example, FDA could require that a brand manufacturer only provide a particularly risky drug to patients via certain qualified physicians or pharmacies, and that makes a lot of sense from a patient safety perspective.

But even back in 2007, when we were working on this legislation,

we were concerned about the possibility that brand name companies could use this kind of restrictive distribution REMS program as a tool for delaying generic competition. In fact, the House passed a version of the legislation containing some very strong language that could have gone a long way to preventing these kinds of abuses. But after we conferenced the bill with the Senate, that strong language was watered down and was not as effective as I would have hoped. And I understand the FTC shares my concerns about these abusive practices.

Chairwoman Ramirez, I would like to ask you to briefly explain in more detail how the practice has been used to delay generic competition and discuss potential effects on the ability of consumers to get access to generic drugs. Has the FTC witnessed a proliferation of these kinds of abuses over the years?

Ms. Ramirez. Thank you for the question.

This is an area, as you noted, in which we have been -- that we have been looking at very closely, and we are concerned. I can't discuss any particular companies, but I will say that we are all worried that branded companies may use -- as a way of impeding the generic from getting on the -- and what I can tell you is that we are looking at it very closely, and if we find a violation of the antitrust laws and if we find that these restrictions are being used in an anticompetitive manner, we do intend to take action.

Mr. Waxman. Well, I appreciate that. I think part of the problem is the differences of the two agencies, the FDA, and the FTC. FDA has indicated that absent a specific legislative directive, it

can't prevent brand companies from abusing these REMS protocols to restrict access of generic developers, and the agencies noted that the FTC is the more appropriate agency to ensure, quote, "that the marketplace actions are fair and do not block competition."

Chairwoman Ramirez, can you explain why the language of the 2007 act that attempted to give FDA the ability to prevent these abusive practices has not been sufficient to curb these kinds of behaviors?

Ms. Ramirez. I can't speak to what is happening at the FDA, and I don't have in mind the particular language, but again, what I can assure you is that we take these issues very seriously. As you know, the agency has been very active when it comes to trying to ensure that generic drugs enter the market in order to provide low-cost drugs for consumers.

Mr. Waxman. Do you agree -- yes, excuse me.

Ms. Ramirez. I can assure that you we will be looking closely at the issue, and we will take action, but I can't say what is happening --

Mr. Waxman. Do you agree with the FDA that the FTC is the more appropriate agency to oversee anticompetitive practices like these, and would the FTC need additional tools or resources to help enforce the current statute?

Ms. Ramirez. Given our long history as a law enforcer, I believe that we are very well positioned to address these issues. I don't believe that we need new authority. I believe that we have authority under Section 5 to take action against these types of practices if they

are found to be violative of the antitrust laws.

Mr. Waxman. Thank you very much. I look forward to working with you on this.

Mr. Terry. Thank you. Good questions.

I will now recognize the gentleman from Ohio, Mr. Johnson.

Mr. Johnson. Thank you, Mr. Chairman.

And I want to thank our witnesses for being here today also. I come from a region of the country where trade is critically important. Appalachia, Ohio, is the home to many, many small family-owned manufacturing companies and their ability to play on a level playing field is extremely important. So I applaud the Commission for its advocacy efforts, especially in the area of pro-competition or against anticompetitive policies that emerge, such as, for example, the recent attempts by States and localities to create government-imposed obstacles to new technology-delivered services, such as the Uber car service. Consumers benefit from more choices and more competition, and the FTC should continue this practice.

What is on the Commission's current advocacy agenda? And more broadly, how is the agenda established, and how does the office's activities compare to years past? I will just open it up from left to right.

Ms. Ramirez.

Ms. Ramirez. Yes, and as you noted, we do have an active staff that is engaged in advocacy work, and this is an important part.

Mr. Johnson. What's on the agenda?

Ms. Ramirez. We focus on a number of different issues we are looking at, and frankly, some of the issues may come to our attention just merely by staff.

Mr. Johnson. Do you have any specifics? I don't want to use the whole 5 minutes.

Ms. Ramirez. We are paying particular attention to scope of practice issues in the healthcare arena. For instance, there may be paraprofessionals, nurses, dental hygienists, who might be able to help lower costs, improve access to health services, so we pay attention to what is happening at the local level. There sometimes may be proposals that are aimed to restrict activities of these type of professionals. And we opine and we submit comments asking legislators to --

Mr. Johnson. How is the agenda established?

Ms. Ramirez. Health care is a priority for us, so we are looking at that primarily, but we also welcome comments from stakeholders. If they become aware of an issue that they believe we should be commenting on, we are open to suggestions because oftentimes we don't have the resources to be examining everything that takes place at a local level.

Mr. Johnson. Commissioner Ohlhausen, previously in your career, you were director of the Office of Policy Planning. How many policy planning offices does the FTC currently have, and is it accurate that there are now three different policy offices -- if my understanding is correct, a Commission level Office of Policy Planning, a General Council Office of Policy Studies, and the Bureau of Competition Office

of Policy and Evaluation -- so is it necessary to have more than one?

Ms. Ohlhausen. Thank you for your question. Yes, I did run the FTC's Office of Policy Planning from 2004 to 2008. And some of the functions that were previously in the Office of General Counsel and in the Bureau of Competition have been consolidated into a bigger Office of Policy Planning that was done under previous Chairman Leibowitz' tenure, which I think was a good development. There are still some staff in the Office of General Counsel and in the Bureau of Competition, but they play somewhat of a different role. The FTC's Office of Policy Planning, one of its primary missions is overseeing the Competition Advocacy Program, as you mentioned. And the focus has been on things like health care, and new technologies, and reaching some underserved communities. One of the things that drives our responses also is foreign advocacy. The FTC needs an invitation from a policymaker to comment. So that also helps shape what we are able to comment on.

The other policy staff that are in the Bureau of Competition, they help consult on cases, on enforcement work, and in the General Counsel's Office, they do a little bit more of like sort of very deep studies, things like the patent issues. So there is a separation of functions that makes sense.

Mr. Johnson. Okay, I have time for one more question. The FTC has seen its budget authorization and resources double over the past decade, and by most accounts, a budget that has more than doubled in the last decade would not garner much sympathy for being resource constrained. If you had to explain to the American taxpayers what they

have received for their money, how would you respond to that? Ms. Ramirez?

Ms. Ramirez. I think the American taxpayer receives quite a bit for their money. We are a small agency. We have approximately 1,200 employees. Our budget is under \$300 million.

Mr. Johnson. But it doubled over the last decade. How do you justify that?

Ms. Ramirez. There was a point in time when the agency's staff did expand. We are now at a lower number than we have been in the past. I think that we do quite a bit for consumers. In my opening remarks, I noted some of the monetary savings that consumers receive just by -- in enforcing our competition mission alone, we have saved consumers approximately \$3 billion over the course of the last few years. So I think that the American taxpayer gets quite a bit.

Mr. Johnson. Mr. Chairman, I yield back.

Mr. Terry. Thank you.

At this time, I recognize the gentleman from Illinois Mr. Kinzinger for 5 minutes.

Mr. Kinzinger. Thank you, Mr. Chairman.

And thank you all for being here. I appreciate it. I was pleased to see that the Securities and Exchange Commission issued in October an investor alert warning investors to beware of pyramid schemes posing as multilevel marketing programs. As the investor alert notes, investors should be aware of companies that do not show revenue from retail sales, that offer easy money, that have complex commission

structures or require buy-in to participate.

In fact, the three most common types of fraud were 7.6 million incidents, I believe, of fraudulent weight-loss products; fraudulent prize promotions, 2.9 million incidents of that; and fraudulent work-at-home programs, 2.8 million incidents.

We will start with you, Chairwoman Ramirez. Do you coordinate with informal working groups formally on enforcement actions or otherwise with the FCC on investigating and stopping pyramid schemes?

Ms. Ramirez. We do coordinate and work with other agencies, certainly. On any specific matters, I can't talk about particular companies or matters.

Mr. Kinzinger. Sure.

Ms. Ramirez. But I will say that we work very effectively with a number of different sister agencies as appropriate.

Mr. Kinzinger. Does anybody else on the panel have anything to add to that?

Just throw it out there. What has the FTC done lately to combat these pyramid schemes?

Ms. Ramirez. It is an issue that we looked at and have looked at closely in the past and what I can tell you is that we continue to be vigilant in looking at and monitoring the marketplace to ensure and guard against --

Mr. Kinzinger. Can you give me something beyond just I am continuing to be vigilant? I mean, what has been done lately? I know you can't name names.

Ms. Ramirez. I apologize, I can't give you particular companies.

Mr. Kinzinger. I am not asking for names.

Ms. Ramirez. But I think our most recent case, I can't remember.

I am happy to provide that detail to you.

Mr. Kinzinger. Okay, hopefully, we can get that done.

Ms. Ramirez. Yes.

Mr. Kinzinger. Maybe you can give me this answer without answering names. How many cases have you brought within the last year against pyramid schemes?

Ms. Ramirez. Within the last year, we have not brought any enforcement actions against pyramid schemes, but I will provide you the prior activity that the --

Mr. Kinzinger. How come not in the last year?

Ms. Ramirez. I may be mistaken about that. My colleagues are correcting me. There may be one enforcement action against a pyramid scheme. But we can provide you further accurate information about that.

Mr. Kinzinger. All right, because I am -- yeah, I am looking at, as I mentioned in the beginning, something like 13 million incidents, and so we have maybe one case you said that is going?

Ms. Ramirez. I can provide you --

Mr. Kinzinger. You can provide me the information, but I just want to -- but I think it is important to --

Ms. Brill. Can I just mention? So sorry for interrupting.

Mr. Kinzinger. No, please.

Ms. Brill. Just to augment what the chairman has said, pyramid cases are incredibly complex. I actually began my career at the State AG's office doing a pyramid case, and they are very resource intensive. So although we might have only done one case -- and we will get you those details -- it is a tremendous amount of work, and each one of those cases is very important in sending appropriate messages to the community, both the investor community and consumer community.

Mr. Kinzinger. Okay, and I will go to a bit of a different subject here. Some have raised concerns because the FTC faces a lesser burden in obtaining a preliminary injunction from a Federal judge than does the Department of Justice Antitrust Division. Merging parties can reasonably anticipate the possibility of different substantive outcomes depending on which agency has jurisdiction to review the matter. To avoid the potential for these different outcomes, why shouldn't Congress require the FTC to litigate merger challenges in Federal Court, just as the DOJ is required to?

Ms. Ramirez. So the FTC, when it seeks a preliminary injunction, it does go to Federal Court. The standard for obtaining a preliminary injunction is differently stated as between the Department of Justice and the FTC.

In my view, however, as a practical matter, the standards end up being about the same. I don't see a material difference, and I don't believe that the difference in words have led to any disparate outcomes. So that is between the two agencies.

Mr. Kinzinger. Okay. Well, thank you all for serving your

country.

Mr. Chairman, I yield back.

Mr. Terry. Well, thank you for your service to our country.

Well, that concludes all of the question and answer period, so that it brings us to the end of this hearing. But I just want to tell you that I think it is a really tribute to the FTC and your importance that we had 22 members show up at this hearing. Lots of interest, as I mentioned before the hearing, from our outside folks, and so I look forward to working with you, continuing to work with you over the next year to ensure that you will have equally or even a better 100 years at the FTC.

So, also, as you probably know, we have the ability, or right to submit written questions to you. And I am going to guarantee you, you will get written questions. In fact, I am going to send one that is a generic question that just says looking back, as Mr. Olson did, and now looking forward, what is the underbrush that needs to be cleaned out? I am sure that is something every agency could and should do.

So I will telegraph that is one of my questions to you. What I would appreciate is when we receive all of the questions from the members, we will send them to you and if you could, in a timely manner, I have asked others to -- timely, means to me, 14 days-ish; 14 days to get those back to us. I would greatly appreciate that.

With that, Mr. McNerney, anything for you to close?

Mr. McNerney. No.

Mr. Terry. All right, then we are adjourned. Thank you.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]