

**PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION**

on

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

Before the

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE

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I. INTRODUCTION

Chairman Terry, Ranking Member Schakowsky, and Members of the Subcommittee, I am Edith Ramirez, Chairwoman of the Federal Trade Commission (“FTC” or “Commission”). I appreciate the opportunity to appear before you today with my fellow Commissioners to discuss the FTC’s work in its 100th year and beyond.¹

The FTC is a highly productive and efficient, small independent agency with a large mission. It is the only federal agency with jurisdiction to protect consumers and maintain competition in broad sectors of the economy. The agency enforces laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity.² The FTC also educates consumers and businesses to encourage informed consumer choices, compliance with the law, and public understanding of the competitive process. Through enforcement, advocacy, education, and policy work, the FTC protects consumers and promotes competitive markets in the United States.

The impact of the FTC’s work is significant. Over the past three years, the agency saved consumers approximately \$3 billion in economic injury by stopping illegal anticompetitive practices and mergers in the marketplace.³ During that same time period, the FTC returned over

¹ The written statement represents the views of the Federal Trade Commission. The oral presentations and responses to questions reflect the views of individual Commissioners, and do not necessarily reflect the views of the Commission or any other Commissioner.

² The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, and enforces a wide variety of other laws ranging from the Clayton Act to the Fair Credit Reporting Act. In total, the Commission has enforcement or administrative responsibilities under more than 70 laws. *See* <http://www.ftc.gov/ogc/stats.shtm>.

³ Consumer savings is calculated by estimating how much prices would have increased if the FTC did not take action to preserve competition. Staff uses a formulaic approach taking one percent of the volume of commerce in the affected market(s). For example, if the FTC takes action to preserve competition in a local metropolitan grocery store market by requiring divestitures, staff would estimate the volume of grocery sales in that metropolitan region and calculate consumer savings as one percent of that sales volume. For mergers, the consumer savings are assumed

\$196 million to victims of deceptive or unfair practices and forwarded \$117 million in disgorgement of ill-gotten gains and civil penalties to the U.S. Treasury, following the successful prosecution of Commission cases and the resulting court-ordered judgments or settlements.

Much of the Commission's work today is driven by evolving technology and globalization and is different in many respects from the work the FTC engaged in a century ago. At the same time, many of the problems in the marketplace are fundamentally the same – consumer fraud schemes, deceptive advertising, and anticompetitive conduct – all of which the agency tackles through aggressive law enforcement. Our agency structure, research capacity, continued commitment to bipartisanship and cooperation, and exceptional staff will allow the FTC to continue to adapt to external changes and successfully fulfill its mission of protecting consumers and competition into its next century.

II. HISTORY OF THE FTC

President Woodrow Wilson signed the Federal Trade Commission Act (“FTC Act”) and the Clayton Act in 1914, and the FTC opened its doors on March 16, 1915. The Commission absorbed the work and staff of the Commerce Department's Bureau of Corporations, which had been created in 1903. Like the Bureau of Corporations, the FTC could conduct investigations, gather information, and publish reports. The FTC, however, had enforcement authority and could bring administrative cases. It also could challenge “unfair methods of competition” under Section 5 of the FTC Act and enforce the Clayton Act's more specific prohibitions against mergers, interlocking directorships, and stock acquisitions that may substantially lessen competition or tend to create a monopoly.

to last for two years, and for nonmerger actions, the assumption is one year. When the staff has case-specific information, it uses that information instead of the formula.

There have been several important amendments to the FTC Act over the years. For example, the 1938 Wheeler-Lea Act amended Section 5 of the FTC Act to proscribe “unfair or deceptive acts or practices” as well as “unfair methods of competition.” It also provided authority to impose civil penalties for violations of Section 5 orders. In 1973, Congress broadened the FTC’s authority to allow it to seek preliminary and permanent injunctions in federal court. Two years later, Congress granted the Commission express authority to promulgate rules addressing unfair or deceptive acts or practices and to seek civil penalties for violations of those rules. Congress specified the procedures the Commission needed to follow to promulgate such rules, and further amended the agency’s rulemaking proceedings in the Federal Trade Commission Improvements Act of 1980.

Other changes include the 1976 Hart-Scott-Rodino (“HSR”) Act. The HSR Act imposed a statutory premerger notification requirement and waiting period before covered mergers could be consummated, which greatly expanded the agency’s ability to fashion effective relief in merger challenges. In addition, in 1994, Congress articulated what constitutes an “unfair” act or practice, adopting the Commission’s own definition that it is one that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”⁴ Most recently, Congress amended the Act to permit greater cooperation and information sharing with foreign authorities in cross-border cases.⁵

Additionally, Congress has expanded the FTC’s responsibilities through a number of other statutes. For example, the Commission enforces an array of consumer credit laws,

⁴ 15 U.S.C. 45(n).

⁵ *See, e.g.*, 15 U.S.C. §§ 46(f), 46(j), 57b-2(b)(6).

including the Fair Credit Reporting Act and the Fair Debt Collection Practices Act, as well as laws addressing specific problems, such as the 1994 Telemarketing and Consumer Fraud and Abuse Prevention Act. The latter Act provided the basis for the FTC to establish the National Do Not Call Registry. We recently celebrated the Registry's 10th anniversary, and it continues to be one of the government's most popular programs because of its positive impact on hundreds of millions of Americans.

III. THE FTC TODAY

Today the FTC's mission is carried out by the equivalent of 1,176 full time staff located in Washington, DC and offices in seven regions around the country. Our fiscal year 2013 enacted budget, net of sequester, totaled \$296 million. The agency's law enforcement and policy work is carried out by the Bureaus of Consumer Protection, Competition, and Economics as well as the Office of the General Counsel, the Office of International Affairs, and the Office of Policy Planning.

A. Consumer Protection

The FTC works to protect consumers from unfair, deceptive, or fraudulent practices in the marketplace by, among other things, taking law enforcement actions to stop unlawful practices and educating consumers and businesses about their rights and responsibilities. The FTC targets its enforcement and education efforts to achieve maximum impact and works closely with federal, state, international, and private sector partners in joint initiatives. The agency also convenes workshops with various stakeholders to examine emerging consumer protection issues and releases reports on a variety of consumer protection topics.

In recent years, the FTC has emphasized protecting financially distressed consumers from fraud, stopping harmful uses of technology, protecting consumer privacy and data security,

prosecuting false or deceptive health claims, and safeguarding children in the marketplace. For example, the Commission has: (1) stopped foreclosure rescue scams and deceptive payday lending practices; (2) taken aggressive enforcement actions to stop illegal robocalls and hosted a public challenge to find technological solutions to the problem; (3) held a public workshop and issued a report examining mobile payment systems; (4) prosecuted operations that placed unauthorized charges on consumers' mobile phone bills; (5) sued companies that made false or unsubstantiated claims that their dietary supplements prevent or treat serious diseases; and (6) brought actions that protect the privacy choices of well over one billion people.

In fiscal year 2013, the FTC filed 72 new consumer protection complaints in federal district court and obtained 100 permanent injunctions and orders (including two civil contempt orders) requiring defendants to pay approximately \$198 million in consumer redress or disgorgement of ill-gotten gains. In addition, consumer protection cases referred to the Department of Justice resulted in 15 court judgments for civil penalties totaling more than \$41 million. The FTC also filed 16 new administrative consumer protection actions and obtained 27 administrative orders.

During the same timeframe, the Commission issued 13 reports on a variety of consumer protection topics, released 256 new consumer and business education publications, and released 33 consumer and business education videos and audio public service announcements.

Consumer fraud knows no boundaries and strong cross-border cooperation is key to effective law enforcement. The FTC, therefore, continues to develop strong bilateral relationships with foreign authorities around the globe. In 2012, Congress reauthorized the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders ("U.S. SAFE WEB") Act of 2006, renewing the FTC's authority to cooperate with foreign law

enforcers by sharing information with them and obtaining information on their behalf. The U.S. SAFE WEB Act allows law enforcers to achieve greater results together than they could working alone.

B. Competition

The FTC's efforts to maintain competition focus on stopping anticompetitive mergers and other anticompetitive business practices in a wide range of industries of critical importance to American consumers. These include health care, technology, energy, consumer goods and services, and manufacturing. This work is critical to protect and strengthen free and open markets – the cornerstone of a vibrant economy. Vigorous competition results in lower prices, higher quality goods and services, and innovation leading to beneficial new products and services. As a part of its program to maintain competition, the FTC undertakes competition policy research and development activities to improve agency decision-making. In addition to enforcement, the FTC also promotes competition through advocacy and education initiatives. These initiatives deter anticompetitive mergers and business practices and reduce business' costs of compliance with antitrust laws. Advocacy encourages governmental actors at the federal, state, and local levels to evaluate the effects of their policies on competition and ensure such policies promote consumer welfare.

In fiscal year 2013, the agency pursued 27 new competition law enforcement actions (merger and nonmerger) and undertook several important workshops, reports, and advocacy opportunities to promote competition and educate its stakeholders about the importance of competition to consumers. The FTC also continued to monitor and vigorously enforce compliance with consent orders as well as with merger and acquisition reporting obligations under the HSR Act, bringing two compliance enforcement actions. During the same time period,

the agency also closed without action 37 non-merger and merger investigations in which we ultimately did not find a threat to competition.

The FTC has also further developed cooperative relationships with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies. The FTC effectively coordinated reviews of multijurisdictional mergers and continued to work with its international counterparts to achieve consistent outcomes in cases of possible unilateral anticompetitive conduct. The FTC has further strengthened the roles that it plays in the International Competition Network and the competition groups of the OECD, the United Nations Conference on Trade and Development, and the Asia Pacific Economic Cooperation forum. These venues provide opportunities to promote convergence toward best practices on substantive analysis and on principles of due process, and for competition officials to share insights on law enforcement and policy initiatives.

IV. CHALLENGES FACING THE FTC

The FTC has worked to keep pace with the vast changes of the past 100 years, including those resulting from technological advances and our increasingly global economy. The agency must remain nimble to anticipate and respond to future marketplace changes and other challenges.

Like other government organizations, the Commission seeks ways to do more with less. Resource constraints, despite a growing workload, remain a constant challenge. The FTC will continue to leverage its resources through careful case selection and by partnering with public and private entities on enforcement and educational efforts. The agency focuses on having efficient internal processes to expedite its work, and improving its own technological infrastructure to allow its staff to work more effectively.

Technology continues to evolve, as exemplified by the explosion in the use of mobile devices. The agency has and will continue to ensure that it has the appropriate information, tools, and staff to address new issues. The agency convenes public meetings, such as its recent workshop exploring the Internet of Things, to gather information from those at the cutting edge of technological advances. These meetings help the agency to identify the consumer protection and competition issues that may be raised by the use of new technology. The FTC also ensures that its staff has the tools to investigate fraud in the high-tech arena. For example, the FTC invested in new technology such as mobile devices spanning various platforms along with the software necessary to collect and preserve evidence, to respond to the growth of mobile commerce and conduct mobile-related investigations. Finally, the FTC hires employees and consultants with the technological expertise needed to support its high-tech work.

Increased globalization and an international marketplace also present challenges to the FTC's competition and consumer protection missions. The agency will seek to address these challenges through continued engagement with and support of foreign authorities and the many bilateral and multilateral organizations that address antitrust and consumer protection issues.

Finally, the Commission's regulations and guides serve an important public interest, protecting consumers from deceptive and unfair business practices, assisting businesses by identifying problematic practices, and creating a level playing field for legitimate businesses. In a rapidly changing marketplace, however, even effective regulations and industry guidance can become outdated, unnecessary, or unduly burdensome. Since 1992, the FTC has systematically and rigorously reviewed its rules and guides to ensure that they continue to enhance consumer welfare without imposing undue burdens on business. The Commission will continue to conduct these regular reviews and repeal or update its rules and guides as appropriate. The FTC also will

continue to coordinate closely with the many federal, state, and local authorities with which it shares jurisdiction.

V. CONCLUSION

The Commission's effectiveness in championing the interests of American consumers is enhanced by its collegial, bipartisan, and consensus-driven nature. The FTC also benefits from its strong leadership, exceptional staff, and results-oriented culture. The 2013 Federal Employee Viewpoint Survey offers one source of information to evaluate agencies' performance in human capital management, leadership, and accountability.⁶ In each of the four indices that are used to measure agency progress, the FTC was ranked in the top four, out of a total of 37 similarly-sized agencies. As we approach our 100th anniversary, the FTC remains committed to finding ways to enhance its effectiveness in protecting consumers and promoting competition, to anticipate and respond to changes in the marketplace, and to meet current and future challenges.

⁶ U.S. Office of Personnel Management, *2013 Federal Employee Viewpoint Survey Results*, available at http://www.fedview.opm.gov/2013files/2013_Governmentwide_Management_Report.PDF.