

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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August 7, 2018

The Honorable Rohit Chopra
Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

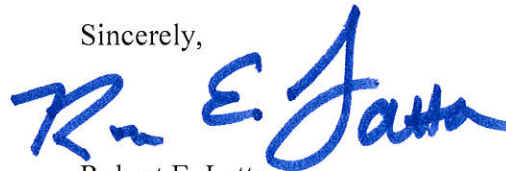
Dear Commissioner Chopra:

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

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

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

Sincerely,



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

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

Attachment

Additional Questions for the Record

The Honorable Jan Schakowsky

1. In the past, FTC staff has recommended that Congress enact broad baseline privacy legislation. They made the recommendation in the Commission's 2012 privacy report and they made it again in the 2015 report on the Internet of Things. And former Chairwoman Edith Ramirez testified before this Subcommittee in 2013 that they were supportive of baseline Federal privacy legislation.

I have also been advocating for comprehensive privacy legislation to provide a framework for companies and to protect Americans' privacy from unwanted intrusion and to give consumers back control of their own data. Understanding that the devil is in the details, yes or no, do you support the concept of comprehensive privacy legislation?

2. Should the FTC be examining whether PBM mergers are driving up costs for consumers? With the understanding that the FTC cannot disclose nonpublic investigations, please explain what steps the FTC can take, including but not limited to a retrospective review of past PBM mergers, to protect consumers and promote competition in the PBM industry.
3. At the hearing, I explored whether the FTC could issue an advanced notice of proposed rulemaking (ANPR) or a notice of inquiry to collect data and get the process started on a data security rule. Regardless of whether Congress passes a law, should the FTC consider issuing an ANPR or notice of inquiry, or other pre-rulemaking efforts on data security right now? Why or why not? What are the benefits to doing this?
4. I'm concerned that the FTC is unable to keep up with all the consent decrees. If the FTC cannot ensure compliance, the consent decrees are not effective in stopping unfair and deceptive acts.
 - a. I understand that the Commission can request information from a company to ensure compliance with those consent decrees. With that many consent decrees, how does staff know what to ask for? How can you be sure the Commission is not missing violations?
 - b. I understand the FTC can require third-party monitoring reports. Are these full audits, and are these outside parties required to notify the FTC if they think a company is violating a consent decree?
 - c. How does the FTC evaluate third-party monitors/auditors? Can the FTC require that a particular auditor be used or not used?
 - d. When a consumer protection order is violated, what steps are taken to ensure that the violator is held accountable?

- e. You have been especially concerned about stopping repeat offenders. Does the Commission have the tools and resources it needs to track compliance with the consent decrees? What would help?
5. Last year, this Subcommittee held a hearing on the data breach at Equifax. It was a particularly large breach, which concerned many consumers especially because so many consumers had never heard of Equifax and had no idea that a company they had never heard of could have so much of their personal information.

I know the FTC has announced that it is investigating the Equifax breach and that you cannot comment on the details. But I have some questions about the general privacy and data security concerns that were brought up by that breach.

- a. If a breach occurs at a credit bureau, the FTC could bring a case under the Safeguards Rule, right?

Some credit reporting agencies also function as data brokers for advertising and other purposes. Equifax, for example, has its consumer reporting services as well as many services for business like digital marketing, real estate and property analytics, and income and employment verifications. We were told that in the case of the Equifax breach, the database that was accessed was not from the credit bureau side. The data was collected through Equifax's other businesses.

- b. If there is a breach of a data broker, would that breach come under the Safeguards Rule?
- c. Does it make sense to you that consumers' data held by the same company in different databases are treated differently under the law?
- d. What recommendations do you have to address this discrepancy?

The Honorable Doris Matsui

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

- b. Is the Commission reviewing other similar anti-competitive behaviors in the drug manufacturer space? Can the Commission commit to remaining active in this area?
2. One core function of the Commission's mission is to protect consumers from scams. With the continued growth of online commerce, there has been an increase in online booking scams that potentially mislead consumers using fraudulent websites.
 - a. What further attention do you believe the Commission should be giving to this and similar issues as part of the Commission's overall effort to prevent online scams?