MEMORANDUM

November 12, 2019

To: **Subcommittee on Consumer Protection and Commerce Members and Staff**

Fr: **Committee on Energy and Commerce Staff**

Re: **Markup of Two Consumer Protection and Commerce Subcommittee Bills**

On **Thursday, November 14, 2019, at 9:30 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Consumer Protection and Commerce will hold a markup on the following two bills: **H.R. 3851**, the "Travel Promotion, Enhancement, and Modernization Act of 2019"; and **H.R. 4779**, a bill to extend the Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers beyond Borders (US SAFEWEB) Act of 2006.

I.   H.R. 3851, THE "TRAVEL PROMOTION, ENHANCEMENT, AND MODERNIZATION ACT OF 2019"

Reps. Welch (D-VT) and Bilirakis (R-FL) introduced H.R. 3851 on July 18, 2019. The bill would extend the Travel Promotion Act (TPA) of 2009,[1] which established the public-private Corporation for Travel Promotion, later renamed Brand USA, as a national, coordinated marketing organization to promote international travel to the United States. Specifically, H.R. 3851 would reauthorize Brand USA through September 30, 2027. In addition, it would moderately increase the fee used to partially fund the program.

Brand USA is financed by a combination of public and private funds. Private-sector funding may come from either cash or in-kind contributions, with such contributions able to make up a maximum of 70 percent of the private sector's financial contribution to the organization.[2] Public matching funds are contributed from the Travel Promotion Fund, a U.S. Treasury fund sourced by a portion of the Electronic System for Travel Authorization (ESTA) fee, which is collected from foreign visitors to the United States under the Department of Homeland Security's Visa Waiver Program. TPA authorizes a maximum annual public contribution of $100 million at a private-sector matching ratio of one-to-one. No U.S. taxpayer dollars are used to fund Brand USA.

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[1] Pub. L. No. 111-145.

[2] Pub. L. No. 113-235.

TPA assigns to the Department of Commerce most Brand USA oversight responsibilities, including approving the organization's annual goals; reviewing private-sector contributions, including assessing the fair market value of in-kind goods and services; and directing the Treasury Department to disburse federal matching funds after having approved Brand USA's requests and documentation. Brand USA also is required to make its budget and independently conducted annual financial audit results available to Congress. TPA requires that Brand USA provide an explanation in its budget for any single expenditure that exceeds $5 million.

In December 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, Congress reauthorized TPA through September 30, 2020.[3]

II. H.R. 4779, A BILL TO EXTEND THE UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCEMENT WITH ENFORCERS BEYOND BORDERS (SAFE WEB) ACT OF 2006

Reps. Rodgers (R-WA), Kelly (D-IL), and Bucshon (R-IN) introduced H.R. 4779 on October 22, 2019. The bill reauthorizes the U.S. SAFE WEB Act of 2006 through September 30, 2027. The bill would also require the Federal Trade Commission (FTC) to issue a report to Congress describing the Commission's use of and experience with the authority granted by the U.S. SAFE WEB Act.

Enacted into law on December 22, 2006, the U.S. SAFE WEB Act amended the FTC Act to improve the FTC's ability to combat unfair or deceptive acts or practices that are international in scope.[4] The Act was last reauthorized in December 2012 for an additional seven years.[5] The law is scheduled to expire on September 30, 2020.

SAFE WEB bolstered the FTC's authority in five key areas:

- Enhanced investigation and litigation tools: The law clarifies that the FTC's section 5 authority to combat unfair or deceptive acts or practices includes acts or practices involving foreign commerce that cause or are likely to cause injury in the United States or that involve material conduct within the United States.[6] It also allows the FTC to seek a court order to delay or prohibit a third-party recipient of a subpoena from notifying the investigative target when that action would cause an adverse result.[7] It also exempts financial institutions, payment system providers, Internet service providers, telephone service providers, and domain name registrars, among

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[3] *Id.*

[4] Pub. L. No. 109-455.

[5] Pub. L. No. 112-203.

[6] Pub. L. No. 109-455 at § 3.

[7] Pub. L. No. 109-455 at § 7.

others, from liability for voluntarily providing certain information to the FTC when they might otherwise be prohibited from sharing such information.[8]

- Information sharing: U.S. SAFE WEB allows the FTC to share compelled and confidential information with a foreign law enforcement agency in connection with consumer protection matters if certain statutory factors are met, including that the foreign agency has the authority to maintain the information in confidence and that it will be used to carry out consumer protection laws.[9]

- Investigative assistance: U.S. SAFE WEB allows the FTC, after considering certain statutory and other relevant factors, to provide investigative assistance in consumer protection matters to foreign law enforcement agencies.[10]

- Confidentiality: U.S. SAFE WEB facilitates the sharing of information from foreign entities with the FTC by allowing the agency to not disclose to the public information obtained from a foreign entity that requested confidential treatment as a condition of providing the information.[11]

- Relationship building: To foster and strengthen relationships with foreign agencies, U.S. SAFE WEB allows the FTC to participate in staff exchanges. It also allows the FTC to enter into consumer protection agreements with foreign agencies when they are required as a condition of information sharing or investigative assistance.[12]

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[8] Pub. L. No. 109-455 at § 8.

[9] Pub. L. No. 109-455 at § 6.

[10] Pub. L. No. 109-455 at § 4.

[11] Pub. L. No. 109-455 at § 6.

[12] Pub. L. No. 109-455 at § 9.