

SENATE COMMERCE, SCIENCE, & TRANSPORTATION COMMITTEE

HEARING ON STRENGTHENING THE FEDERAL TRADE COMMISSION'S AUTHORITY
TO PROTECT CONSUMERS

APRIL 20, 2021

SPEAKERS:

SEN. MARIA CANTWELL, D-WASH., CHAIR

SEN. AMY KLOBUCHAR, D-MINN.

SEN. RICHARD BLUMENTHAL, D-CONN.

SEN. BRIAN SCHATZ, D-HAWAII

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SEN. JOHN W. HICKENLOOPER, D-COLO.

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SEN. RAPHAEL WARNOCK, D-GA.

SEN. ROGER WICKER, R-MISS., RANKING MEMBER

SEN. JOHN THUNE, R-S.D.

SEN. ROY BLUNT, R-MO.

SEN. TED CRUZ, R-TEXAS

SEN. DEB FISCHER, R-NEB.

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SEN. JERRY MORAN, R-KAN.

SEN. DAN SULLIVAN, R-ALASKA

SEN. SHELLEY MOORE CAPITO, R-W.VA.

SEN. MIKE LEE, R-UTAH

SEN. TODD YOUNG, R-IND.

SEN. MARSHA BLACKBURN, R-TENN.

SEN. RICK SCOTT, R-FLA.

SEN. CYNTHIA M. LUMMIS, R-WYO.

WITNESSES:

THE HONORABLE REBECCA KELLY SLAUGHTER, ACTING CHAIRWOMAN,
FEDERAL TRADE COMMISSION

THE HONORABLE NOAH PHILLIPS, COMMISSIONER, FEDERAL TRADE
COMMISSION

THE HONORABLE ROHIT CHOPRA, COMMISSIONER, FEDERAL TRADE
COMMISSION

THE HONORABLE CHRISTINE WILSON, COMMISSIONER, FEDERAL TRADE
COMMISSION

CANTWELL: Good morning. The Senate Committee on Commerce, Science, & Transportation will come to order. We are here this morning to have our first hearing of this 117th. Congress with the Federal Trade Commission, so I welcome the Acting Chairwoman and Commissioners to this very first hearing.

I'd like to begin with the discussion of a report released yesterday by the FTC. The report shines a spotlight on COVID related fraud and scams preying on the American consumers and their families during the Pandemic.

These bad actors are kicking consumers when they are already down; peddling fake COVID cures, trolling for personal data in order to commit identity theft, and selling counterfeit PPP to first responders. The FTC report shows a 45 percent increase in the number of consumer complaints filed for 2020 over 2019. This matches the increase in consumer complaints filed with the Washington Attorney General's office during the height of the pandemic. That's why we're here today, to strengthen the Commission's ability to fight for consumers.

Unfortunately, the FTC's longstanding authority to return money to victims is endangered now at the Supreme Court. This authority, the so called "13B authority" is the bread and butter of the FTC's consumer protection mission.

For more than 40 years, 13B has been used by the FTC to return funds illegally taken from consumers. The FTC has returned hundreds of millions of dollars to Americans injured by unlawful business practices. For instance, in 2019 The FTC returned \$34 million to consumers in a settlement with the Office Depot organization which ran bogus virus scans on consumers' computers and used false results to persuade consumers to pay more for repairs.

Because of 13B, relief to consumers included more than \$3.7 million to 58,000, residents of Texas, more than \$800,000 to 12,000 residents from Tennessee and more than \$1.2 million to about 20,000 Washington consumers.

Similarly in 2019, a settlement against the University of Phoenix, the FTC secured over \$40 million in cash to over 146,000 U.S. students, as well as student debt cancellation. The University of Phoenix attracted students with a false claim of job opportunities, including ads that suggested - that had targeted military and Hispanic consumers. The FTC returned more than \$1.1 million to around 3,500 consumers in Tennessee and 3,000 consumers in Washington.

These cases just demonstrate the need to maintain the longstanding FTC authority, and the COVID pandemic has intensified, I believe, the need for that consumer protection. Since the beginning of the pandemic, the country has been besieged by scams and deception. For example, last April, the FTC sent a warning letter to a health clinic in Olympia, Washington, that was making unproven claims that it could treat COVID-19 with just a high dose of vitamin injections.

The Seattle microbiologist marketed and sold unauthorized corona vaccines to consumers for up to \$1,000 each. The FTC sent him a warning letter and he was later sued by our state's attorney general.

So all of these scams along with one that was perpetrated about making the moniker of an N95 mask when it really didn't meet that standard, all of these things are why we want to make sure that the FTC has appropriate authority. The Commission filed a complaint last week, which used their new authority that we just gave them against another alleged seller of a sham COVID cure. So, we very much appreciate that you're using the new authority and working.

We need honest businesses, many of them small businesses, should not have to compete with businesses who are using these unfair tactics. So it's not only good for consumers, it's also good for our economy, and other businesses that are playing by the rules. So, I know that today we'll hear much more about this, but we have to do everything we can to protect this authority, and if necessary, pass new legislation to do so.

So thank you all for being here. I'll introduce you in a minute, but now I'm turning to my colleague for his comments.

WICKER: Thank you, Madam Chair, and indeed this is a distinguished panel of witnesses. It's always good to hear from them, and we're glad to have you back before our Committee. I look forward to your testimonies.

For over 100 years, the FTC has been the chief consumer protection agency in the United States. Its mission, stated plainly in the FTC Act, is to protect consumers from unfair or deceptive acts or practices in the marketplace, such as deceptive advertising, harmful technology, illegal robocalls, and scams. It also includes protecting consumers from businesses that misuse their personal data or attempt to process their data in discriminatory ways.

As the distinguished Chair has already said, unfortunately, the COVID-19 pandemic has created new avenues for scammers and cybercriminals to take advantage of consumers. The unprecedented nature of the virus has opened the door to scams related to fake cures and vaccines, as well as fake virus tests.

Most recently, the pandemic has created a market for counterfeit vaccination cards purportedly from the CDC. This adds to a long list of frauds, scams, and bad business practices the FTC is continually working to address.

To combat fraud and protect consumers from unfair or deceptive practices in the marketplace, the FTC has historically relied upon its assumed authorities under Section 13(b) of the FTC Act. This has enabled the FTC to stop illegal activity or require scammers to give money back to those who have been defrauded.

Last Congress, in anticipation of the Supreme Court's plans to address challenges to the scope of the FTC's authority under 13(b), I included a provision in my proposed data privacy bill, the SAFE DATA Act, that would clarify the Commission's authority under the law to stop fraudulent activities and obtain monetary redress for consumers.

This morning, I look forward to examining how Congress can further clarify the statute to empower the FTC not only to enjoin improper behavior, but also to compensate victims for their losses. I also look forward to discussing how to ensure the proper assessment of monetary remedies and that legitimate businesses are given fair notice about practices the FTC may deem to be unfair as it expands its use of 13(b) to stop wrongdoing.

The pandemic has further underscored the need for strong, uniform data privacy legislation. Over the past year, our normal activities of work, school, and visiting with family moved online to prevent further spread of the coronavirus. However, without no national data privacy law in place, continued virtual interactions could pose serious and negative risks for exposure and potential exploitation of the personal data of millions of Americans.

I am sure Commissioners will want to discuss what the FTC has been doing during the pandemic to protect the privacy and security of personal data and what additional tools the agency needs to safeguard consumers' information from misuse.

The FTC also plays an essential role in overseeing and preventing unfair methods of competition in the marketplace. Although the Commission's work on competition is not within the jurisdiction of this Committee, it does impact consumer welfare and informs how companies may attempt to defraud, mislead, or discriminate against consumers in the marketplace.

In this regard, Big Tech's dominance is of particular concern. This dominance has led to an abuse of their market power in the form of censorship and content suppression, as well as the abuse of consumers' data in the form of repeated privacy violations and data misuse. As Justice Thomas opined two weeks ago, we now have a society in which a few Silicon Valley CEOs decide what films you can stream, which books you can buy, and what scientific discourse is allowed in public.

Today's hearing is an opportunity to discuss what more the FTC can do to address these matters in furtherance of its consumer protection mission.

Finally, this Committee has been working to develop bipartisan legislation to establish a national framework permitting college athletes to be compensated for the use of their name, image, or likeness (NIL). As this work continues, it is clear that the FTC's expertise in protecting consumers will be a necessary asset in ensuring compliance with any NIL law and guarding student athletes and their families from exploitation.

I hope Commissioners will discuss what additional tools, resources, and personnel expertise the FTC would need if takes on this important work and oversees this collegiate sports marketplace as part of its consumer protection mission.

Clearly, there is much to discuss today. I thank the Commissioners for their testimonies, and I thank the Commissioners for their bipartisan work. I look forward to an informative discussion.

At this point, Madam Chair, I would mention that you and I received a letter dated this morning from Mr. Neal L. Bradley, on behalf the Chamber of Commerce. He is the Executive Vice President and Chief Policy Officer, consisting of three pages, addressing issues of importance with regard to the bill of trade Commission and their interpretation of Section 19 of the act and Section 13(b) of the act. And I would ask that that letter be added to the record at this point.

CANTWELL: Without objection.

WICKER: Thank you.

CANTWELL: Thank you Senator Wicker. Thank you for that comprehensive statement. I certainly appreciate you mentioning those issues that I definitely inclined to query the Commission today on data security rules, because I agree, there's more that needs to be done there. I hope that we will have a hearing in May on this issue of market dominance on the news, because clearly there's so many issues there that both the DOJ and the FTC should be looking into.

We've just been looking for the right time for us to get necessary work out the door so we can turn to that focus, but clearly we produced a report on some of this last year about their tech companies market dominance as it relates to media, so definitely very concerned about that.

And just thank you for your leadership on NIL, I certainly appreciate the work that you and your team and others, Senator Booker and Blumenthal, everybody's been doing on such an important issue. So you're right, it's a good chance to also ask them about that. So, I don't think in an information age there's a shortage of issues that the FTC should be more aggressively involved in.

So, we're glad you're here. Let me introduce the Honorable Rebecca Slaughter, who is the acting Chair of the Federal Trade Commission, the Honorable Noah Phillips, a member of the FTC, the Honorable Rohit Chopra, who is with us as Commissioner of the FTC and remotely, the Honorable Christine Wilson.

Welcome to you all. Again, we're glad you're here. Thank you for your ongoing work. And Madam Chair, we'll start with you.

SLAUGHTER: Thank you, Chair Cantwell and Ranking Member Wicker and members of the Committee for inviting us here today. I am grateful for your continued support of the Federal Trade Commission and for the opportunity to testify about strengthening our authority to protect consumers. I know our staff, who have been working diligently throughout the pandemic, share my appreciation for your interest in the work we are doing and the challenges we face.

Americans are struggling. Yesterday the Commission issued a report, as the Chair noted, identifying the major challenges consumers have faced and continue to face as a result of the pandemic: health and safety concerns, economic distress, and increased susceptibility to digital harms.

While all Americans have confronted these challenges, we know that Americans from communities of color and lower income communities have been hardest hit. I will focus my remarks today on how the FTC is applying the resources and authority Congress has given us to address these concerns and highlight the areas where I believe strengthening our authority is most critical.

The Commission is profoundly grateful for the funding boost we received in our annual appropriation and particularly in the American Rescue Plan. Even before the pandemic, the growing problems in both consumer protection and competition requiring enforcement attention were stretching our resources to the breaking point. That situation was dramatically exacerbated in the last year.

We are working quickly to use the new money to hire staff and strategically fund our data collection and outreach efforts, with a specific focus on ensuring that we are reaching our hardest hit communities. When Congress gives us new authority, we will take it seriously and put it to use responsibly.

We welcomed the COVID-19 Consumer Protection Act, which provided us with new civil penalty authority regarding certain COVID-19 deceptive acts or practices. Just last week, only four months after the law was passed, we announced our first action seeking penalties under this new authority, targeting deceptive COVID-19 marketing of vitamin D and zinc products.

I want to emphasize that when it comes to our current efforts and authorities I am a strong proponent of a growth mindset. I challenge myself and the Commission at every turn to look at all the tools we have been given and find ways to deploy them with greater effect.

I recognize, however, that there are limits to the growth mindset: the FTC faces significant obstacles when it comes to our authority and resources. Among the most urgent challenges we face is a judicial attack on our ability to provide monetary relief to consumers under Section 13(b) of the FTC Act.

We use 13(b) in a broad range of cases including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and most recently, COVID-related scams.

Section 13(b) enforcement cases have returned billions of dollars to consumers, including \$11.2 billion in refunds to consumers during just the past five years. Returning money to consumers who have been harmed is among the most important things we do, but the courts are dramatically curtailing our ability to deliver that relief.

And right behind the cases challenging our redress authority under 13(b) is a line of cases challenging our ability to get injunctive relief. Enforcement actions will slow and redress for consumers will dry up if Congress does not act quickly to affirm our full authority under Section 13(b).

Along with 13(b), our other most pressing challenge remains resources. As I noted, we are incredibly grateful for the additional funding provided to the Commission, but we still remain significantly under-resourced and over-leveraged. Even before the recent merger wave, we were averaging twice as many annual merger filings as we had been 10 years ago, while our employee count remained flat. In fact, we had 50 percent more employees at the beginning of the Reagan administration than we do today. And our filing rates keep going up.

On the consumer protection side, there is similar growth in both breadth and depth of problems in the markets, especially digital markets that require enforcement. But our ability to keep up with this volume of work against large, sophisticated companies without substantial increases in resources will be limited.

In addition to restoring 13(b) and augmenting resources, I want to note additional ways that I believe Congress could strengthen our ability to deter illegal conduct and return more funds to consumers. Specifically, I would welcome broader civil penalty authority, establishment of a consumer redress fund, and independent litigating authority for our civil penalty cases.

In closing, I want to thank you for the opportunity to discuss our work, and reiterate my commitment to you. When Congress chooses to vest the FTC with resources and authority, we will use it responsibly and effectively to protect the American people. I look forward to answering your questions.

CANTWELL: Thank you. Chair Slaughter. Now, we'll hear from Commissioner Phillips. Welcome. Thank you for being here.

PHILLIPS: Thank you. Chairwoman Cantwell, Ranking Member Wicker, members of the Committee, thank you for the opportunity to appear before you. I'm honored to testify with my fellow Commissioners about the important work we do at the FTC.

Thanks to you, our legal and financial wherewithal to fight the wave of scams the epidemic brought with it is substantially greater. Fighting bad actions like these are the bread and butter of the FTC's Consumer Protection Program and deserves to remain our focus.

I want to spend the few minutes I have on Section 13(b), in particular as it applies to consumer protection. Should the court rule against us in AMG, we will need a fix. Without one, in too many cases where money should be on the table, it will not be. As you consider a fix, I believe the focus should be on helping consumers, not on inappropriately punishing businesses.

In the last few years, some have pushed for more money across the board, frequently citing deterrence as the goal. Courts have been pretty clear that deterrence is penal in nature; and I am concerned that disgorgement in particular will be used as a penalty, especially in cases where consumer harm is low.

Penalties makes sense when you have clear rules. Where rules aren't clear, penalties don't work well. It makes sense to post the speed limit and fine you if you exceed it. It doesn't make sense to announce that you can drive at a "fair speed" and fine you when you drive over 65.

This concept is central to the design of the FTC. The agency was created to examine business practices, first regarding competition, later consumer protection, and, where we deemed them violative of broad terms like "unfair" and "deceptive," condemn them. This broad authority enables us to be nimble, to address new issues like privacy, and to help develop the law. We can advise Congress, as we did censuring non-disparagement clauses in cases that provided a basis for the Consumer Review Fairness Act.

We can also send a message to courts, as we did with pay-for-delay agreements, on which we made important progress last week in the U.S. Court of Appeals for the Fifth Circuit. But, because we are enforcing broad terms that give businesses less notice, we do not have general penalty authority.

On the flip side, where a company is subject to an order; or we have adopted a rule; or Congress has passed a statute; or we send a notice under 5(m)(1)(B) - in all these circumstances, where rules are clear, penalties apply.

Section 19, another one of our tools, provides a contrast. Where conduct is fraudulent or dishonest but may not be as clearly defined, equitable money is available. There is less of a notice issue, because businesses know that fraud can get them into trouble.

We use Section 13(b) to stop harmful conduct in a wide swath of areas: fraud, pharmaceutical antitrust cases, privacy and data security, mergers, and deceptive advertising. The powers that you give us can and will be applied broadly, but the appropriate remedies should not be the same in every case. We should have a different result for fraud, for example, than we do for a data breach caused by unreasonable data security practices.

The equitable remedies traditionally available to us under 13(b) are largely developed in cases involving, and perfectly suited to, outright fraud. For example, courts developed a framework for monetary relief in which the agency starts with the defendant's gross receipts as a proxy for consumers' losses.

Courts have also held that the agency is not required to offset the value of products that consumers receive. For pure fraud, it makes sense to ensure that consumers get all their money back.

In other cases, however, the equitable result might not be to return every penny paid. Maybe consumers received some or even most of the value from the product or service, they ate the cereal, they stayed in the hotel room, and equity should reflect that fact.

My concern is that, without additional clarification in a 13(b) fix, you will increasingly see the FTC seek to punish companies under the guise of "disgorgement." For me, the most important and pressing concern is the ability not only to stop the ongoing fraud, but to get consumers back the money they have lost.

Thank you. And I look forward to addressing your questions.

CANTWELL: Thank you, Commissioner Phillips. Commissioner Chopra, welcome. Thank you for your comments. We look forward to hearing them.

CHOPRA: Thank you. Chair Cantwell, Ranking Member Wicker and members of the Committee, it's an honor to be here with my colleagues. I appreciate efforts by you all in Congress to address the uncertainty surrounding the agency's authority under Section 13(b). But, of course, we all know that a 13(b) fix will not fix many of the FTC's challenges.

Time and time again, when large firms flagrantly violate the law, the FTC is unwilling to meaningfully pursue accountability. Take the example of Google, where the company's repeated law violations over the last decade were frequently met with favorable treatment from the FTC.

In 2011, the Commission entered an order against Google to halt its unlawful privacy practices. But, just one year later, the FTC announced that company violated it. Around the same time, there were growing concerns about Google's anticompetitive practices. But, in 2013, the

Commission closed its antitrust investigation into Google, allowing the company to submit a weird non-binding letter of commitments.

In 2014, the FTC announced it caught Google breaking the law again regarding in-app purchases by children. But, it didn't end there. The FTC then caught Google engaging in years of illegal surveillance of children on YouTube. The Commission's latest resolution: a highly favorable settlement, where the tech giant was even allowed to algorithms enhanced my illegally obtained data by kids.

While the FTC is quick to bring down the hammer on small businesses, companies like Google know that the FTC is simply not serious about holding them accountable. We together must turn the page on the FTC's perceived powerlessness.

First, we must make clear that FTC orders are not suggestions. Google is not the only company to engage in repeat offenses. In 2012, after the FTC finalized an order with Facebook about its privacy abuses, the company violated the agreement almost immediately, over and over again.

But in 2019, Facebook was able to extract a settlement from the FTC that gave the company a lot to celebrate. The FTC did not require Facebook to make any material changes to its business model or its user surveillance. The FTC even handed out special immunity provisions for Facebook's top executives. The settlement was a devastating setback for consumer privacy.

Congress and the Commission must implement major changes when it comes to stopping repeat offenders. Since the Commission has shown it might lack the will sometimes to enforce agency orders, Congress should allow victims and state attorneys general to seek injunctive relief in court to halt violations of FTC orders.

Second, we must make sure that the FTC is meaningfully deterring wrongdoing in the first instance. The Commission often agrees to no-money no-fault settlements, even in cases of egregious fraud, like fake review and Made-in-USA scams, where bad actors simply agree to follow the law going forward.

And when the FTC does seek money from wrongdoers it can be insufficient. Under Section 13(b), if a bad actor defrauds you of \$1 million, the most they can be required to pay is \$1 million. This is not a deterrent, particularly when the probability of getting caught is so low.

We must take action now to trigger additional remedies, such as penalties and damages, without imposing any new requirements or uncertainty on businesses. In addition, Congress can authorize the FTC to seek civil penalties in a broader range of cases, including for knowing violations of Section 5 and other dishonest or fraudulent conduct.

Last, but not least, we must address the abuse of Section 230 of the Communications Decency Act. Tech companies aggressively exploit Section 230 to evade accountability. Even when the immunity does not apply, the lack of clarity taxes public resources and slows down enforcement.

I am particularly concerned that e-commerce marketplaces are becoming a haven for counterfeit and unsafe goods, including fake PPE and medicines to treat COVID-19.

Members of this Committee have put forth a number of proposals for Section 230 reform, including removal of the immunity in laws by civil law enforcement like the FTC. I strongly support Congressional efforts to rein in these excesses, which can put brick-and-mortar small businesses and local newspapers and journalist at a competitive disadvantage.

In conclusion, COVID-19 and the endless scandals involving large technology firms have reminded us, we must work together to ensure the FTC has the tools and uses all of them to protect American families and honest businesses from these abuse.

Thank you so much and I look forward to your questions.

CANTWELL: Thank you, Commissioner Chopra. Now, we will turn to our last witness Commissioner Christine Wilson, who is joining us remotely. Welcome.

WILSON: Thank you. Chairman Cantwell, Ranking Member Wicker, and Members of the Committee, I am pleased to appear before you today, albeit remotely.

I would like discuss three areas this morning in which Congress can support the FTC's mission by clarifying the FTC's authority under Section 13(b) of the FTC Act, enacting federal privacy legislation and approaching the topic of antitrust reform judiciously.

Recent federal court decisions have challenged the FTC's ability to use Section 13(b) to obtain injunctive and equitable monetary relief. Defendants use these challenges - these decisions to challenge the FTC's authority in ongoing cases and settlement negotiations. We face difficulty prosecuting and resolving cases. Congressional clarification of 13(b) would help immensely.

Stakeholders have expressed legitimate concerns about 13(b). The absence of a Statute of Limitations can be cured by including one in legislation. Concerns about the unbounded use of 13(b) to get disgorgement in antitrust cases can be cured by setting boundaries on when the FTC will seek disgorgement.

The factors in the FTC's now rescinded 2003 disgorgement policy statement provide good roadmap to address concerns about 13(b) and consumer protection cases, involving not fraudsters, but legitimate companies selling legitimate products, albeit with deceptive claims, Congress could direct courts to account for the value consumers retain from the product despite the deception. The legitimate concerns of stakeholders can be addressed, while also restoring our ability to use 13(b) to pursue wrongdoers.

The second topic I'd like to cover is federal privacy legislation. FTC Commissioners on a bipartisan basis have long urged Congress to pass privacy legislation. Consumer and industry groups agree.

The first and best option would be for this Congress to enact privacy legislation. You are best situated to make the value judgments inherent in privacy legislation, and we stand ready to assist with implementing that legislation through rulemaking and enforcement.

But, what if Congress has other legislative priorities? The FTC has been lambasted for not doing enough to protect consumer privacy. I disagree with those critiques, but our jurisdiction and tools are limited. That said, rulemaking under Section 18 of the FTC Act, known as Mag-Moss rulemaking is within our authority.

Granted, a Mag-Moss rulemaking is not the optimal solution. But in the absence of congressional action, and in the face of continuing harm, including growing infringements of our civil liberties, I support Acting Chairwoman Slaughter in considering this path.

By design, Mag-Moss rulemaking is a lengthy and cumbersome undertaking. I would be thrilled to undertake the Mag-Moss process only to have Congress preempt that effort by passing privacy legislation. Absent privacy legislation, a Mag-Moss process would move us closer to providing transparency for consumers, establishing guardrails for businesses and erecting safeguards for our civil liberties. But inaction is not an option.

Finally, I will address calls to overhaul antitrust enforcement. Here, I offer a cautionary note. Calls for antitrust reform typically are premised on concerns about so called Big Tech. But there are many types of concerns, including consumer privacy, content moderation and anticompetitive conduct. Some commentators aggregate these concerns to support breaking up large tech companies.

The better approach, I submit, is to address each concern with appropriate tools. Privacy concerns require privacy legislation, and content moderation concerns may require reforms to Section 230. That leaves competition concerns. I believe our antitrust laws are sufficiently broad and flexible to address the dynamic tech sector.

In the 90s, DOJ won its antitrust case against Microsoft, a dominant tech firm at that era. Today, DOJ, FTC and state agencies have filed suit against Google and Facebook using existing antitrust law. With all due respect, let's see how these cases go before making sweeping changes.

This judicious approach is important because many proposals threaten to wreak havoc on our broader economy by politicizing antitrust enforcement, stifling innovation in R&D and driving prices higher at a time when many of our fellow Americans still suffer economic fallout from the pandemic.

What kind of incentives do we want to create? Incentives to invest in R&D and charge low prices or to engage in free-riding and regulatory gamesmanship? I am not saying our current approach is perfect. I support retrospectives to determine whether we're making the right calls in merger review, I support greater transparency on the part of the agency, not only when we bring cases, but when we decline to bring them.

And Congress can play a role by clarifying that the same standard applies to FTC and DOJ merger challenges, providing more funding for the agencies, including through merger filing fee adjustments, and giving the FTC authority over nonprofits and common carriers.

In closing, we welcome the opportunity to provide technical assistance to Congress on these issues. And I look forward to answering your questions. Thank you.

CANTWELL: Commissioner, thank you so much. And, again, thank you to the whole Commission for joining us, and I see that you all - well, you're before Congress, why not take the opportunity to be broad on all the things that are challenging in your day-to-day functions, so we appreciate that.

But we really do want to focus in on this issue of disgorgement, and to make sure that we really are addressing this appropriately. So I just want to ask all the Commissioners, all of you support the FTC's use of disgorgement.

WILSON: Yes.

PHILLIPS: Senator, as I indicated in my opening statement, I think that there are - disgorgement creates kind of a problematic model for us. I think restitution is where we ought to focus for consumer protection.

CANTWELL: So you don't like the word, but you believe that consumers should be compensated for some of the harm?

PHILLIPS: Yes.

CANTWELL: Thank you.

CHOPRA: Yes, I think when a company violates the law and steals from people or profits from it, the least we should do is make them forfeit that.

CANTWELL: Commissioner Wilson?

WILSON: Yes, I support monetary redress for consumers.

CANTWELL: OK. Great. So the reason I'm saying this is, because one thing I want to point out is that, if the Supreme Court makes a decision, and we need to do something to further clarify the law, I don't want to spend a lot of time.

Now, having seen these COVID cases in my state I - and the fraud cases, I should say, I don't want to leave a lot of time to go on - I don't want to free reign atmosphere. So, Chair Slaughter how would you - how do you think we best address that? Would you say you and the Commissioners are pretty much in sync about the solutions there?

SLAUGHTER: Well, thank you for the question, Madam Chair. Listen, we have a Commission full of smart engaged people who have different views on a number of perspectives - on a number of topics, but also a fair amount of common ground. And I think we can offer you our individual views and we can defer to Congress in terms of making the determination.

But where I think we all agree, and I will certainly capitalize on what you said, is the need to act with quickly. Even while the Supreme Court case is pending, the uncertainty around 13(b) is affecting our work and affecting our cases.

It's making harder for us to get that redress to consumers. It's outright barred in some circuits, and other defendants are just saying, let's wait and see. We don't want to negotiate. We don't want to get into these conversations. It's making it harder for us to stop illegal conduct. And it's making it harder for us to make your constituents whole when they have been harmed.

So I would certainly urge you to act quickly and act comprehensively to make sure that we are providing relief to consumers. And as my colleagues have indicated, deterring illegal behavior, because we - what we really want is for consumers not to get hurt in the first place.

CANTWELL: Exactly. Thank you. That's so well said. I've had my own experience with another agency, the Federal Energy Regulatory Commission on the Enron cases, and literally people were not implementing rules against market manipulation. So we gave them a new authority, and they used it, and guess what, they better policed the markets.

And so I think these are important tools, so I hope - I appreciate the letter from the chamber, but I hope they aren't insinuating the first time COVID authority shouldn't have been passed. I'm assuming Mr. Phillips, you - Commissioner Phillips, you support the first time authority. I don't want to take up too much time. But you support that first time authority on COVID penalties that we gave the Commission?

PHILLIPS: I do. I thank you for it. I recently voted for the case where we used it.

CANTWELL: Right. So my point is, this kind of strong tool can be a big deterrent in a marketplace where there are so many legitimate actors, and yet there are some bad actors that plague the whole sector. And so, I very much - I want to get everybody on the data security rulemaking, if I could. Does everybody support a data security rulemaking by the FTC? Commissioner Slaughter?

SLAUGHTER: I do. I think it's something we need to explore.

PHILLIPS: I would prefer if Congress would pass the data security statute, but I would support, you know, subject to the metes and bounds of the rule - rulemaking.

CHOPRA: Yes, I think we need to codify rules that give clear sense of what's expected and trigger real consequences for violations.

CANTWELL: Thank you. Commissioner Wilson?

WILSON: Yes, I would absolutely support Acting Chair Slaughter moving forward with Magnuson-Moss rulemaking on consumer privacy. And I agree with Commissioner Phillips that having Congress move forward with federal privacy legislation would certainly be the optimal solution.

CANTWELL: Yes, I was asking --

WILSON: - to fall back.

CANTWELL: I was asking about data security. Listen, Senator Wicker and I are doing our best to solve a lot of very thorny problems of the information age. I guarantee you, it's bigger than both of us. It's going to take a lot of effort to get the context.

I actually don't think the policies are just - the context - right - the context, just as we did, moving quickly on COVID, because everybody came to an agreement. Oh, this is absurd to allow people to go around and market this in the middle of a pandemic, right? So we all came together. That was pretty easy.

In the privacy case, the Information Age is playing out, but no doubt. But so - but Commissioner, I was asking actually about data security, as opposed to the larger privacy context. Are you for a rulemaking by the FTC with or without Congress's help for data security?

WILSON: Yes, I would support that.

CANTWELL: Thank you, Senator Wicker?

WICKER: Well, thank you, Madam Chair. This letter dated April 20 is now a part of the record. And it's a bit unfair, because the Commissioners have seen it only briefly before the hearing began. But let me just ask --- maybe I will start with you, Commissioner Phillips.

The letter says the issue for the FTC is that the text of the statutes allow the FTC to seek and courts to grant monetary relief only under Section 19 not section 13(b). By using - it goes on to say by using 13(b), the FTC has foreclosed its ability to seek monetary damages. What do you say to that?

PHILLIPS: I think to some extent, what the statutory text says is what the court is going to decide in AMG. I think for our purposes, the question is under what circumstances we should get money and how it should be calculated.

Where I - just based on my brief review of the letter, I do not think money should be limited to fraud cases.

WICKER: But just the use of 13(b) foreclose the Commission's ability to seek any monetary damage?

PHILLIPS: That is not the position we've taken in court? No.

WICKER: Madam Chair?

SLAUGHTER: No, I don't think it does. And I would just note, I haven't had a chance to review the letter in detail. But even just skimming it, I see a number of really problematic assertions and interpretations of the law with which, I think, at least I strongly disagree. And, I --

WICKER: But - and let me just ask you to do that on the record up. But with regard to that sentence, that the courts can grant monetary relief only under Section 19 and by using 13(b) you foreclose the ability to seek monetary damages.

SLAUGHTER: Candidly, Senator, I don't really understand what that means.

WICKER: OK.

SLAUGHTER: So I would have to review it and understand the argument a little bit.

WICKER: Good. Again, it's fair for you to - all four of you to respond on the record, and so I ask you to do that.

Well, disgorgement versus restitution versus compensation, help me real briefly, Commissioner Phillips, is there a distinction there? Or are all four ought to be on the same page in terms of the way we write this?

PHILLIPS: I think colloquially, at least the way I'm using disgorgement, we're talking about the disgorgement of ill-gotten gains, it's the profits. There's a difference between that and restituting to consumers, redressing them for the harms that they have suffered.

Sometimes these are the same numbers, right? Every money I pay into a fraud, there's no value. But you are asking the question earlier about sort of legitimate businesses. If I sell you a hotel room, this - I'll take the Wyndham case. I sell you a hotel room for a night, but you don't have adequate data security. The harm that you suffer, right, is the hotel room minus the data security, starting as the courts have us do in the context of fraud under 13(b) with 100 percent, the whole value of the hotel room? I don't think that's the right way to do it.

WICKER: Mr. Chopra, are you and Commissioner Phillips having a little disagreement about that distinction?

CHOPRA: Well, I guess, it's - I think, the definition is right. I agree with him. I think in my view, when a company has egregiously violated the law, we might not always be able to figure out who the specific victims are. But that doesn't mean they should be able to get, you know, keep some of those ill-gotten gains.

The FTC - I mean, many of its Made in USA fraud cases, for example, a company labels a good as Made in America, but it's really made in China, we often give these kind of no money

orders in the past, because it's hard to figure out who the victims are. But in my view, of course, they should have to forfeit the gains from this illegal practice, and even pay penalties.

WICKER: OK. Now, let's start - let me let me ask Commissioner Wilson a different question. And, goodness, we only have a minute here. But Commissioner Chopra mentioned very emphatically mishandling by this Commission in the Google matter and the Facebook matter. And I want to see if we can get responses, it may take longer than that, Madam Chair, but particularly from Commissioner Wilson and Commissioner Phillips. What do you say to the very emphatic statements that Commissioner Chopra made about the Facebook and Google decisions?

WILSON: Thank you for the question, Senator Wicker. I have not reviewed in detail the 2013 recommendation memos to the Commission from the legal and economic staff. But I would like to make clear that a staff recommendation memo was not the end of my inquiry when I decide whether I will support a staff recommendation.

I typically review the testimony and the documents that are cited in the recommendation memos, I review submissions from the parties, and I have significant interactions with staff in terms of oral briefings and the parties in terms of their advocacy.

So even if I had spent a fair amount of time with the memos that have now been published, I do not have all of the information I would require to determine whether the earlier Commission decision was correct.

And I would say there is a risk when reassessing a recommendation many years later, at the time many decisions regarding competition cases, there's an assessment of likely future events. There's uncertainty regarding the outcome of those future events.

And so when reviewing a case recommendation many years later, we have the benefit of seeing the actual outcomes and the later known outcomes may mask the true level of uncertainty that was important when the decisions were made.

WICKER: Commissioner Phillips, respond, if you will, to what Mr. Chopra said.

PHILLIPS: Sure. And just to clarify my understanding about your question is, you're asking about the settlement of the Google YouTube case, the COPPA case, and the Facebook privacy case.

WICKER: I'm asking you to respond to the testimony of Mr. Chopra.

PHILLIPS: Sure. In those cases, which were penalty cases, in one case, because of a rule applied COPPA, and the other one FTC order, penalties are appropriate. And the amounts that we collected exceeded any reasonable estimation, in my view, of the profits of the companies.

The 13(b) question is different, because we're not looking at the same scenario. We're not looking at those clear rules. And in my view, I think we ought to aim at redressing consumer harm. That ought to be our lodestar.

WICKER: Well, OK, Madam Chair, I have exceeded my time. Let me make an observation. The Commissioners typically submit a unified statement for the record as witness testimony, which - it does indicate that the matters on which they agree. But then they come in here and their testimony, while tactful, and ladylike and gentlemanly, is far different.

And it would just seem to me that it would be helpful to me as a member of the Committee if we got in advance, as we usually do, with other Commissions and with other panels, a real sense of the differences of opinion. And I won't ask you to rule on that, because I don't know that we can. But it - to me, it would be helpful, if Commissioners would submit the real testimony that they're going to give, so that we have a chance to go over that and try to be prepared for the give and take. So thank you, Madam Chair.

CANTWELL: I thank you, Senator Wicker, for that observation. And I think I'm understanding your point, or at least I should say, my interests are to move quickly if the Supreme Court does act on this case. Because you can have lots of things struck down for a variety of reasons, it doesn't mean you still don't believe in the authority. That's why I've asked the Commissioners whether they all believe in this authority they do.

The question is, what's the legal framework for it? And yes, I think it's astounding that Facebook has paid \$5 billion in fines, but that's based on previous orders by the FTC that they then violated or in other instances of the law that were violation.

So, yes, I think we have to be clear what we're talking about as it relates to 13(b), the right legal framework if we need difference. But to me, the case law is there and very relevant and this has been a tool that has been used for decades. We certainly don't want to throw it out.

I have anxiety over the fact that we could have disagreement about this. So yes, I agree that getting the Commission to at least look at language, if we ended up having to propose it, instead of them coming up with it, which, you can't say that is really their function. I mean, they should be doing rulemaking in my opinion, so yes, they could also give us fixes to 13(b).

But if they don't, I guarantee you, we will propose something and ask them for their input. And yes, we should have it in advance of having a formal discussion. So I agree with your main point there. So I do think that this is very important and very timely.

So do we have - Senator Fischer is next.

FISCHER: Thank you, Senator Cantwell. The COVID-19 pandemic caused incredible challenges this past year. One thing that kept spirits up, though, was cheering on our college sports teams from home. So student-athletes best tend to be continued to train and compete during these difficult circumstances when they could, often while wearing masks or with empty stands.

Last year, former FTC Chairman Simons issued supportive words for National (inaudible) legislation for student athletes. He stated his longstanding concern, the students are not getting

what they should get in terms of compensation. Ms. Slaughter, do you share this concern, particularly given existing FTC authorities to protect student-athletes under SPARTA?

SLAUGHTER: Thank you, Senator for the question. Yes, I'm very concerned about exploitation of student athletes.

FISCHER: Thank you. Commissioner Phillips, as states continue to enact NIO legislation to ward off recruiting disadvantages. Do you believe a uniform national framework could effectively protect student-athletes?

PHILLIPS: Yes, I do. Senator.

FISCHER: Thank you. Ms. Slaughter in remarks you made back in February you highlighted the need for strong data privacy legislation at the federal level. As the pandemic only pushed more of our work, our children's education, and even our personal interactions online, exasperating data risks. I appreciate the FTC's work to use its existing authorities to guard against consumer harms in this space.

However, in what key ways could passage of a federal data privacy law strengthen how the FTC protects privacy and does passing such a law remain a priority for you?

SLAUGHTER: Thank you, Senator. I take very seriously our obligation to look at the authority Congress has already given us, as Chair Cantwell reflected, and make sure we're using it as well as we can. And to that end, the authority that we have to look at privacy issues right now from a rulemaking perspective, would be under Section 18 or the Magnuson-Moss Act.

I agree with what Commissioner Phillips said earlier that clear rules are good, they're good for businesses, they're good for consumers. It is valuable to have clear rules for the marketplace. So I want us to use the authority that Congress has already given us as well as possible.

But as Commissioner Wilson noted in her opening, the rulemaking authority we have under data privacy right now is much more cumbersome than the traditional federal rulemaking authority under the Administrative Procedures Act.

And so, I would very much appreciate and continue to think it is a priority for Congress to pass data privacy legislation that would give us more clear rulemaking authority, impose civil penalties on violators for all the reasons Commissioner Chopra and others have discussed, that penalties can really incentivize compliance, which is what we want. We don't want companies to violate the law to begin with.

And then I also think it's important for Congress to consider how meaningful limitations on how data and is collected and used are important rather than leaving us stuck in a notice and consent framework, which is how most of our law operates today. I think that that inadequately protects consumers, puts too much burden on them, and allows violations to continue rather rampant in the markets.

FISCHER: You spoke of the usefulness of the FTC requiring consumer notice in recent privacy cases that involved that false marketing. And you stated that notice can be effective in letting consumers vote with their feet. However, does the effectiveness of notice in this scenario depend on a marketplace that has healthy competition?

SLAUGHTER: Yes, Senator. That's exactly right. And this is actually why, I think, we can't fully separate our consumer protection mission from our competition mission. I think that these issues are very much intertwined.

And when there isn't healthy competition in a market, then consumers don't have any choice, but to continue to use a particular product or service, even if the terms of that use are things with which they are uncomfortable. So I think you're right, that these issues are very closely connected.

FISCHER: Thank you. Thank you, Madam Chair.

CANTWELL: Thank you, Senator Fischer. Well, that brings up a question as it relates to what - at what point - so I asked everybody whether they supported doing a rulemaking on data security, and everybody said, yes, OK. But obviously, you don't have one.

So, now, we also had a discussion about what you have and don't have as far as a framework, and you would rather us have a framework. I agree, we should give those frameworks. But then there becomes a role and responsibility for all of you to act in doing your job.

So this question by Senator Fischer, like, well, what's it going to - where do you draw the line? So I don't know, maybe we'll start with you, Mr. Chopra. What --

CHOPRA: Yes, Senator, I think we --

CANTWELL: - so if you all want to, and we're not giving you that framework, then why not do it, at least as it related to that very narrow thing? And the reason why I say that is, because I think everybody's pretty uniform across the United States of America that thinks that data security and data harm is happening to them.

When you think of the Equifax and the multiplicity of things, and I think that the Federal Trade Commission has done some great work as it relates to telling companies this is not acceptable data security hygiene for a company handling this much data and information on behalf of consumers. You can't have three junior IT people running data security for you. You have to build an infrastructure. So the Commissioner has been good about that.

But why not just keep going if this is such a large issue, and you all have answered, yes. Why not keep going?

CHOPRA: Yes, Madam Chairwoman, whether it's Equifax, Marriott, or so many others, this is not just about identity theft. This is also about Chinese state surveillance. There is more and more attacks that are more national security oriented and the harms are very great. I say, we

should have started already. And Madam Chairwoman, Ranking Member Wicker of Congress passes a law that's good too. But I think getting started quickly will even help us implement any law that Congress might pass or we may use our own authorities to move forward.

CANTWELL: Thank you. I think we have Senator Tester is next? Senator Tester - all right Senator Tester --

TESTER: OK. Sorry. Sorry about that, Madam Chair. I assume that was way down the list. But thank you very, very much. I appreciate the opportunity. So this is question for the panel. Look, the scams around COVID has been amazing. You guys probably are fully aware of them, requesting personal information and \$50 for a home test, and, you know, money for this money for that. And there's number of bills up there.

But the fact is we - Montana, my state is a large population. We tend to be a little elderly. Lot of veterans homes with limited amount of access to the internet, in some cases. Many of the reported scams at Montana had happened via telephone and in some phony contract.

Look, you get it. It stinks. It smells. I don't know what kind of vermin do this kind of work, but we've got to get our arms around it. So my question is, how is the FTC planning to reach rural consumers to educate them about these COVID-19 scams?

SLAUGHTER: Thank you, Senator.

TESTER: Who wants to go first?

SLAUGHTER: I'm happy to start with the answer to that question. I think you're right that the COVID-19 scammers, like all other scammers are, are preying on our most vulnerable populations that includes veterans, it can include people in rural communities who are harder to reach.

And so making sure that our outreach efforts are targeting those populations, in addition to our law enforcement efforts, is a real priority for us. In terms of reaching rural populations we have, in addition to doing all of our online outreach, we have also sent physical postcards out. We recently stood up a community advocate center to make sure that our work and our resources are accessible to people who aren't following our blog posts or engaging with us on Twitter.

So working with advocates is - and working with state attorneys general and making sure we're understanding what's going on in communities across the country so that we can respond appropriately, is very much incumbent on us. And I would just add that there was particular money dedicated in the American Rescue Plan, COVID money, to do some of this outreach. And that's one of the things that we're putting to work right away.

TESTER: Anybody else?

PHILLIPS: Sure. Senator, I agree with everything the Acting Chair said. Very quickly, when the pandemic began, we started doing events also with AARP, with the EJCC, stakeholder

groups that are particularly focused on communicating to the elderly. That new money that you approved, and we all thank you for it - just to elaborate a little bit on what the Acting Chair said. That money goes to printing books, right, and creating advertisements that we can send to all sorts of stakeholders to help get messages out, to protect themselves against these scams, against identity theft. It's very important.

TESTER: OK. I'm going to move on to my next question, because I'm limited time. Before I leave, though, I just want you to know, I get probably six phone calls a day on this thing - robo calls, and please figure out how we can knock these guys down. I mean, it's unbelievable. I got one yesterday that was just over the top bad.

So if you could help on that. Look, I'm a farmer. I go back every weekend. I've been farming since I was basically 15 years old. I used to be able to take a pair of pliers and a screwdriver and work on my tractor.

Now, if my tractor breaks down, I have to call the dealer, because I don't have the software or the programs, they have a, I guess, a patent on that stuff, so that I can't fix my tractor. OK. And we've got bills to fix this.

But I'm wondering what the FTC has done to protect consumers from anti-competitive policies on right to repair since we spoke last August.

CHOPRA: So Senator, I'm happy to start. The FTC has a law called the Magnuson-Moss Warranty Act, which prevents some of the anti-competitive tie-in. I think we need to start ramping up our enforcement there, because clearly, there are those who are breaking the law. But Senator, we will also be doing more on this, in my view, to tackle where - places where the law doesn't cover.

This is not just about tractors, it's about our electronics. It's even about military equipment, and even manufacturing and service equipment in medical facilities. We have to take this on, and we have to do it quickly.

TESTER: Anybody else?

WILSON: Senator Tester, this is Christine Wilson. Sir, you and I talked last year during our oversight, hearing about our struggles to fix tractors and chippers. I absolutely agree with you that this is an issue. During the workshop that we held with a variety of different stakeholders, we received valuable input on this issue.

I agree with Commissioner Chopra, that we should be looking to use both our consumer protection and our competition enforcement to address these issues. I believe that too frequently, we have competition issues, efforts by manufacturers to limit downstream competition for the repair of vehicles and electronics. And those are dressed up as consumer protection issues.

I think we need to pierce that veil and move forward with enforcement on the antitrust side and the consumer protection side.

TESTER: Well, I want to thank you Ms. Wilson. I want to thank you, Mr. Chopra for your responses to that. We just need to do something, because there's so much consolidation going on in rural America right now. And I know Mr. Chopra talked about medical communities and all that. And that's very, very important. Also, probably just as important.

But if we want to have people live in rural America, we've got to stop crap like this or it's just going to further evacuate rural America. Thank you both. Thank you, Madam Chair.

CANTWELL: Senator Moran is next.

MORAN: Chairwoman Cantwell, thank you very much. Pleased to have the FTC in front of our Committee today. Thank you for making that possible. Commissioners earlier this year, you announced a legal action against three brokers based in New York who allegedly used automated software to illegally buy 10s of 1000s of tickets for concerts and sporting events, and then resold them at higher prices.

This action represents the first ever utilization by the FTC of the authorities provided to it under the BOTS Act, which I introduced with Senator Schumer and it became law in 2016. So first of all, thank you for utilizing the authorities we granted you.

The question I - it could be for all, but I have several other questions I'd like to get to. I just like an update, do you have the necessary authorities that you need to pursue these kind of price gouging opportunities, this unfair trade practice exhibited by those who buy things and sell them at much higher prices utilizing the computer?

SLAUGHTER: Thank you, Senator. As you know, this is an issue that's close to my heart as well and I was really happy that we were able to bring these cases. It's another example of Congress speaking recently, telling us that something is a priority, giving us authority and us going out and using that authority as Congress intended.

Here, by using civil penalties to make sure that the cost of breaking the law is higher than the benefit that the companies derived from it. So you've given us that authority in this particular case, and we're going to continue to look for ways to use it and we appreciate it.

MORAN: So you have what you need, Commissioner?

SLAUGHTER: I think on these questions, particularly about bots, yes, I don't think that that gets necessarily to the entirety of the issues in the ticket markets, which also implicate competition concerns as well. But that's where we need to be applying our antitrust tools as well as our consumer protection tools.

MORAN: Me and my staff, welcome any input that you would have in how we could be of help in that regard. My state, like many, earlier this year experienced severe cold weather. For the month of February it drove up increased demand for natural gas throughout our region.

This weather left impact - that weather impacted municipal gas utilities in their communities who had no choice but to purchase gas at significantly inflated prices by the magnitude of hundreds of percentage more than the normal cost at that time a year. And now we're left with the consequences of trying to pay those bills.

In February - February 22nd, the Energy Regulatory Commission - Federal Energy Regulatory Commission, FERC, announced an investigation. I am just interested, Chairwoman Slaughter, is there any interest in this topic at the FTC?

SLAUGHTER: Thank you, Senator. I think it's fair to say that energy markets are important to us for a number of reasons. And what you're talking about particularly sounds to me a lot like price gouging, which is a real problem. One that has not historically been addressed under the FTC Act.

But I am very interested in making sure that we are really using the full breadth of the law that we have to attack market practices that are unfair to consumers as a method of competition. And price gouging can sound in that space as well. So I think it would be a new effort for us. But that doesn't mean it's not one that we should explore.

MORAN: I think Senator Blumenthal and I have explored this topic of price gouging with the FTC before, maybe it was also in our appropriations process with the FTC before us. Let again, let me know or my staff know if there's something that you would request of me.

Finally, 13(b) authority. There's a case pending before the Supreme Court that could severely impact the FTC's ability to obtain monetary relief, when the Commission has reason to believe a company is violating or is about to violate a FTC statute that the - a statute that the FTC enforces.

If the FTC's understanding of Section 13(b) is held by the Supreme Court to be incorrect, there will be a significant impact on the FTC's ability to force companies to pay restitution to defrauded customers. While the FTC will still be able to get an injunction against the company's behavior, it would no longer be able to collect those damages.

While the FTC's 13(b) authority has been debated in recent months, I propose to give the FTC other important authorities to enforce privacy obligations in my Consumer Data Privacy and Security Act introduced last year, soon to be reintroduced again, with continuing efforts with Senator Blumenthal to see if we can find a bipartisan solution, along with Senator Cantwell to accomplish that.

That legislation includes first time civil penalty authority and some new rulemaking powers. How important is it for these new authorities to the FTC's ability to be able to enforce federal privacy law? And do you support the inclusion of new authorities in federal privacy legislation?

SLAUGHTER: Thank you, Senator. I would be happy to review this specific provisions of the Act - the bill that you're talking about. But as a general matter, yes, I think, new authorities new remedies would be very helpful in federal data privacy legislation.

MORAN: Are you prepared to ask Congress to respond to the Supreme Court rule in a way that is favorable to the authorities, the FTC currently believes it has?

SLAUGHTER: Yes. In fact, Senator, we have already asked Congress to respond. The five sitting FTC Commissioners on a bipartisan basis last fall, all wrote together to ask you to act quickly to restore the 13(b) authority.

Chair Cantwell has talked already this morning about the importance of acting quickly. And I would just encourage you not to wait for the Supreme Court to rule, because the uncertainty around our 13(b) authority is already affecting our cases and hurting consumers.

MORAN: I would express to you and to Chairman Cantwell, Ranking Member Wicker that I'm certainly prepared to engage in that process.

SLAUGHTER: Thank you.

MORAN: Thank you all for being with us this morning. And I look forward to seeing you in person in the future. Look forward to seeing in front of our Appropriations Subcommittee as we determine not only the authorities in the Commerce Committee, but the funding in the Appropriations Committee for the FTC.

CANTWELL: Thank you, Senator Moran. Senator Klobuchar.

KLOBUCHAR: Thank you very much, Chair Cantwell, and thank you to all the Commissioners. I know this was brought up by you, Chair Slaughter, and that is the resource issue. As we're looking at the FTC, which I am pleased that you're doing this, taking on these tech cases, and specifically the Facebook case, not to mention all the other work you have right now.

I believe that we can't take these biggest companies in the world on with duct tape and band aids. And that's why Senator Grassley and I actually have a bill to change the merger fees and the way that they have been assessed. We haven't done this for decades.

And he's firmly behind this bill, as are many other Republicans and Democrats, which actually lifts the burden on some of the smaller companies merging. But on the mega mergers by billion and over adds fees. So that it would bring in significant money for your agencies.

And just to understand, as I make the case for this bill, which I believe may be moving faster than we thought. It seems merger filings are starting to bounce back. What are your expectations regarding the FTC's merger review workload over the next 12 months, I guess I'd ask you.

SLAUGHTER: Thank you so much as senator for the question, and for your support and interest in these issues. You're absolutely right about the scope of the work in front of us at the cost of doing it. And the demand on our resources.

As I pointed out, in my opening testimony, even before a recent merger wave that we are now in, we've had - we've been averaging about twice as many merger filings annually as we did 10 years ago, and our employee count has remained flat. That means twice as much work for the same amount of people. That is difficult.

And then in the last - over the last year, we saw a dip in merger filings at the beginning of the pandemic. But over the last, I'd say six months, they have been extraordinarily high. We had over 300 filings in the month of March. That is the second highest number, second only to over 400 in the month of November.

And so these numbers are continuing, they're continuing to be high. And it is not just high numbers of filings that sort of - if you think about symbols, statistics and proportions, that also means more cases that require enforcement action. We don't want to leave any of those cases on the table and so your work is really helpful to getting us there.

KLOBUCHAR: Thank you. Well, we're hoping to move this quickly. And as you know, we've had wide bipartisan support for it. Commissioner Chopra, you've done a lot on privacy along with many of the Commissioners, along with our Chair Senator Cantwell, Senator Blumenthal, and many others.

Do you believe the FTC needs rulemaking authority to ensure that the agency is equipped to serve as the primary enforcer of federal privacy legislation? Just talk a little bit about that.

CHOPRA: Yes, we have some. We need enhanced one, if we could. It will move faster that way. And ultimately, we need rules that are easy to follow, easy to enforce and that can trigger real penalties for those who violate the law when it comes to invading our privacy. I think our no money settlements when it comes to privacy violations haven't really deterred misconduct, particularly from the biggest tech companies.

KLOBUCHAR: And you agree that consumers should have the ability to access their data and control how it's used, including the right to opt in to their sensitive personal data being used?

CHOPRA: Consumers need a lot more rights, particularly when it comes to control. And there needs to be a lot more accountability for those who violate it.

KLOBUCHAR: Very good. Anyone can take this, but could you elaborate on the FTC's enforcement efforts and how they would be hampered if they - if you lost the power to seek disgorgement, and what effect on consumers that would be? If you want to take that Commissioner Phillips, Wilson, whoever would like to answer that.

PHILLIPS: Thank you, Senator. Let me focus in particular on the redress of losses that consumers experience. I think we are seeing today pushback from companies because of a legal uncertainty of 13(b). I think if the court rules against us, we're going to be unable to give people back money that they have lost, and that is authority that we should have.

KLOBUCHAR: Exactly. And that's you're talking here about this Ninth Circuit case. Correct? I think that Ninth Circuit has affirmed the FTC could seek - sorry - disgorgement, but the Seventh Circuit just regarded years of precedent, when it said that Congress did not provide for monetary relief and now the Third Circuit has agreed. So we've got a major situation going on.

PHILLIPS: Right. As you know, Senator, there are a bunch of different cases dealing with a several different issues. So there's the availability of money, there's the timing of when we can go in and use 13(b). I think we're going to get some clarity, one way or the other in AMG. And I think if we don't get the answer that we want, we definitely are going to need a fix from you.

CHOPRA: Senator, briefly, a court actually set aside a \$448 million judgment against the pharmaceutical company that engaged in an anti-competitive scam and that money is now not recoverable. We do need Congress to act and we do need the FTC to really live up to hold some of these large firms accountable.

KLOBUCHAR: So what you're saying to me is, maybe instead of using fancy legal terms, like disgorgement, we should actually talk about the actual money that should be going to help consumers. Thank you for that advice.

CANTWELL: Thank you.

KLOBUCHAR: Thank you, everyone.

CANTWELL: Thank you. Senator Cruz.

CRUZ: Thank you, Madam Chair. Welcome, Commissioners. And it is always good to see the FTC here. I spent two wonderful years at the FTC. There are a lot of terrific men and women who work there at the Commission.

As you know, I have deep, deep concerns, in particular, about Big Tech. I think Big Tech today represents the greatest accumulation of power, market power and monopoly power over information that the world has ever seen.

And the players in Big Tech are getting more and more brazen. They behave as if they are completely unaccountable, and at times they behave more like nation States than private companies.

I think the Commission has not done nearly enough to rein in the abuse of power from Big Tech. When it comes to content moderation, they're absolutely a black box. They refuse to answer questions in the Senate.

We have promulgated questions to Big Tech over and over again about their content moderation decisions, who are they blocking specifically? What are the numbers? Under what circumstances? What are the remedies? What is the decision making? And Big Tech standard answer to all of that as essentially jump in the lake. That they don't have to answer.

We saw before the prior election, Big Tech take an even greater step and block, "The New York Post." Shut down the nation's fourth largest print newspaper, because Big Tech disagreed with a story that they had put out. That market power with zero transparency and zero accountability, I think is dangerous. It is dangerous for free speech. It is dangerous for free and fair elections.

In your collective judgment, what can and what should the Commission do to rein in the abuse of power from Big Tech?

CHOPRA: Senator Cruz, there's no question that these firms wield enormous power over our lives, over our economy, and over our democracy. I was happy that the FTC voted to issue a complaint against Facebook and its anti-competitive practices. But it's clear, there was a lot of missed opportunities to rein it in before, and local journalists, media have been destroyed by many of these practices.

We have to do more. Congress has to do more when it comes to abuses of Section 230. And we also have to get to the bottom of the black box algorithms that they have. The FTC has issued some orders to understand some of those content curation practices, how those algorithms make decisions, and ultimately we need to hold them accountable for when they violate the law.

WILSON: Senator Cruz, this is Christine Wilson, if I can have just a moment to respond as well. I agree with you that there are significant concerns about content moderation, content curation. As Commissioner Chopra indicated, Commissioner now Acting Chair Slaughter and Commissioner Chopra and I worked together to design this 6(b) study that Commissioner Chopra referenced. And I think that is perhaps the most important task that the FTC is undertaking right now.

As to the question of whether the FTC currently has authority to address these issues, can content suppression be an unfair practice under our consumer protection and competition mandates? I believe that if firms act in ways that are contrary to their material representations or terms of service, it could be an unfair or deceptive act.

I don't want the FTC to be the speech police. We're not equipped to judge political speech. But it is within our authority to determine whether companies are living up to their promises to consumers.

As for questions of unfair competition, if firms agreed to censor a specific and disfavored perspective, it could raise a question of whether there was an illegal agreement under Section 1 of the Sherman Act.

So, for example, if different social media companies take down similar content in the same 24 hour period, that could raise a question about whether companies reached a potentially illegal agreement behind the scenes to silence certain perspectives.

Obviously, parallel conduct is necessary, but not sufficient to prove in antitrust violation. But I would be interested in taking a look at some of these simultaneous takedowns to determine whether there is an underlying agreement that was driving those actions.

SLAUGHTER: Senator, I just wanted to add that. I agree with you that we need to be really concerned about the exercise of market power by these extremely large companies. I think, I was pleased to support the complaint we had against Facebook.

I shared the concerns Commissioner Chopra articulated earlier about our resolutions of the order enforcement case against Facebook earlier and the YouTube case against Google, because I was concerned that it would not adequately incentivize companies to start following the law. Neither of them would adequately incentivize companies to start following the law.

And going back to the topic of this hearing, I think we need to think about the role platforms have to play in the dissemination of COVID scams, for example. This is another area, Commissioner Chopra pointed to Section 230. I think this is an area where we see the scams popping up again and again and again on these platforms and 230 can inhibit our ability to hold platforms accountable for being the marketplace of bad action, instead of good ideas.

CRUZ: Well, and let me encourage you, I think there's particular value the Commission can add in terms of transparency, in terms of addressing the black box. So for example, Big Tech claims, there's not political bias. Well, they happen to have a monopoly on all the information and data you would look to, to assess whether there's political bias.

And so I've asked repeatedly in the 2020 election cycle, how many Republican candidates for office did you block post from, how many Democratic candidates. There's an answer, it's a concrete number, they have it, they refuse to give it.

Simply making that information public for multiple cycles, what they're doing, I think, would be incredibly beneficial, reining in the abuse of power. And I think the Commission has ample authority to require those disclosures right now.

SLAUGHTER: Well, can I just - I just want to point out, Senator. I, as Commissioners Wilson and Chopra indicated, very much supported I think the 6(b) study that we are doing on social media platforms is extremely important. I would like it to have resulting us adding some transparency to the marketplaces.

But the 6(b) statute specifically prohibits us from disclosing certain information that we receive as a part of those studies, where it's tied to particular companies, so we can comment on market trends. But I want to be mindful of the limitations of our statutory authority, which we obviously can't go over, so - and set expectations reasonably there.

CANTWELL: Well - but thank you. We, definitely - I mentioned earlier, we are going to have a hearing about abuse of market power later in May. And so, I appreciate your question. And, definitely, I might add an addendum. I think it's not only go jump in a lake, it's go jump in the lake, and I'll pay 5 billion in fine, because I'm making so much money, it doesn't matter. And

so when it's both of those, I think we really have to do something. So thank you for your questions. Senator Blumenthal?

BLUMENTHAL: Thanks, Madam Chair. We really do have to do something. And my fear is that Big Tech is watching. It's paying 10s of millions of dollars to lobbyists. It's learned the Microsoft lesson, which is don't wait to be sued. And the message they're sending back to the heads of those companies is more talk. We're good. Business as usual.

So I want to say amen to Commissioner Chopra's observations about the need for action. And I think that there should be another take away from this hearing, which is, that if Ted Cruz and Richard Blumenthal can agree on excessive power and abuse of power, there will be some action.

And that includes Section 230. Because, as you said, very well, Acting Commissioner Slaughter, vaccine cards on sites sold there with knowledge by the tech platforms, is knowledge of an illegal act. The mere selling of those cards is a violation of law and only their immunity protects them.

So put aside content suppression, put aside the algorithms, put aside all of the other potential violations of law, we have here and now, there is an immediate threat to public health, fake vaccine cards being sold. Can the FTC do something?

SLAUGHTER: Thank you, Senator. I think this is a perfect example of one of the challenges that we face that is real and material for exactly the reasons that you talked about. When Senator Tester was speaking earlier about robo calls, one of the things I think about that issue is similar to this, which is we can and should go after the individual scam artist. Sometimes they're beyond our reach. Sometimes they're not. We'll get them. It's Whac-A-Mole.

It is the same as with the vaccine card scammers. We should go after as many of them as we can. But if they still have the platform on which to operate, and we can't hold the platform accountable for that, then the scams will proliferate.

BLUMENTHAL: Let me just make a suggestion, I apologize for interrupting. Seems to me that if the sale of fraudulent and fake vaccine cards, representing real threat to public health is a violation of criminal law, there ought to be a referral to the Department of Justice, which does not implicate immunity.

SLAUGHTER: No, I think that that's right. I think if we ever saw anything that indicated a criminal violation, we should and would refer it to the Department of Justice.

BLUMENTHAL: Well, let me let me make a suggestion that you consider doing it. I think that there's more than ample reason to make that kind of referral. And I hope that you will consider doing it. Let me phrase another --

PHILLIPS: Senator, senator --

BLUMENTHAL: - area, privacy. I want to follow up on the Chairman's questions about or the Ranking Member's question that the FTC has oversight of consent decrees. Earlier this month, stolen data on 533 million Facebook users was leaked to the public. Facebook said, well, it's old news. The theft occurred in September of 2019. Yes, the violations of privacy are now, but we're not going to notify anyone.

It also reneged on its promises to separate WhatsApp information from Facebook. Facebook is now forcing users to consent to sharing or also will disable their accounts in a month. I want to ask is the Commission prepared to investigate Facebook's failure to notify users of those privacy violations as a possible violation of the consent decree and reversal of privacy commitments to WhatsApp users. These consent decrees are meaningless unless they're enforced.

SLAUGHTER: That I 100 percent agree with you on. I can't talk about any particular fact pattern. But I will tell you that I believe we can and should and will be investigating every potential violation of consent decrees that we see against these large companies for exactly the reason that you articulated. If we're not following up on our orders, then why have them in the first place?

BLUMENTHAL: Will you be reviewing comprehensively all of your past consent decrees so you can assess whether or not they have been violated?

SLAUGHTER: Yes, I think that's important, but I think it is important to prioritize the content agrees we have with the largest companies where the biggest harm is at stake.

CHOPRA: Senator, it's become a rite of passage among Silicon Valley behemoths that they can get an FTC order and apparently, many of them feel they can just violate it. So I think we need to not only look if it's an order violation, even if it's not, there needs to be some accountability for wrongdoing.

I've also argued that if the FTC, it continues to be perceived as unwilling to enforce its own orders, we may need to do - Congress may need to do what was done in the Packers and Stockyards Act to make sure that individuals can sue in court to halt violations of those orders.

BLUMENTHAL: I agree wholeheartedly. Individuals ought to have a right to go to court if, for whatever reason, the FTC is failing to enforce its own orders. Thank you all for your service. And I look forward to working with you and hearing from you at a Subcommittee hearing that we're having next week on COVID related fraud, including fake vaccine cards. Thank you.

CANTWELL: Thank you, Senator Blackburn.

BLACKBURN: And thank you, Madam Chairman. And I really appreciate this hearing today so much. Commissioner Chopra, I want to start with you. First of all, thank you for your call last week and the conversation about the CFPB.

Senator Cruz just touched on reining in Big Tech, which as you know, that is something that the FTC should be doing more of. And I am working with others on what I just termed a virtual

youth protection agenda. The virtual youth protection agenda addresses privacy, data security, online, antitrust, and then also some work in Section 230.

And holding Big Tech to account where they overstepped the line in 230, where they abuse the privacy rights of individuals is something that I - I think that the FTC is has to pay more attention to. You look at the Facebook settlement, \$5 billion, it should have been \$50 billion. They have built their worth as a company by utilizing data. When you're using these Big Tech platforms, you are the product.

So I'd love to hear from you just for a minute before we move on. What else can the FTC do to rein in Big Tech? What are the additional tools that you need?

CHOPRA: Well, I think we have to use a lot of the tools we already have. We already have a policy statement on deceptively formatted advertisements where they can be held accountable for their algorithmic promotion of content. We already have existing orders against Google, against Facebook, against Twitter, and the list goes on and on, we should enforce them.

But senator, we do need help, I think from Congress, to offer more clarity to rein in the abuses of Section 230. It is being used to traffic unsafe counterfeit goods with impunity, and there has to be something done to make sure that our economy is safe, that brick and mortar businesses can fairly compete, and that we actually can have a democratic society that is not --- that is free and fair, and not mostly dictated by a handful of companies.

BLACKBURN: OK, let me ask you this. In 2016, I worked in a bipartisan manner, bicameral, we passed the BOTS Act, and I know that Senator Moran mentioned this just a little bit earlier. So as we continue to monitor the entertainment industry, is there anything else this Committee should be aware of, things that you all have learned as we look at the entertainment industry? And as we look at what is happening with the bots, and then likewise with the BOTS Act? And could that template of the bots act, be used in other applications or for other industries?

SLAUGHTER: Thank you, Senator. You're right. We have brought our first BOTS Act case. It is important, and I think BOTS Act does provide an important template for other industries in a couple of ways. Bots are not just a problem in ticket sales, they go well outside that. And so it might provide a template for looking at the use of bots to circumvent meaningful limitations in other areas.

But the other way, I think, the BOTS Act is a useful template, is that it gives us specific civil penalty authority, so we don't have to engage in tortured negotiations about what particular harm to individual consumers where. We have a stick that we can use to deter bad actions. So I think it's useful there.

In terms of other questions in the ticket industry, I would - I don't think bots are the entirety of the problem that we have in ticket markets. And I would encourage Congress and the Committee to look also at the competition questions that are involved and the concentration in entertainment markets, and also in practices like whitelisting sites where consumers think they're going to one site to get a ticket, but it actually is a fake site.

So those are things we need to look at from an enforcement perspective. But I also think they merit the attention of Congress as well.

BLACKBURN: Thank you. We'll continue to work with you on that. My time is about up. I've got a 13(b) question. I will submit that to you for an answer. And, Madam Chairman, thank you so much.

CANTWELL: Thank you, Senator Blackburn. Senator Hickenlooper, then followed by Senator Thune. Oh, I'm sorry, Senator Schatz, followed by, then Senator Thune.

SCHATZ: Thank you, Chair Cantwell, our Vice Chair Wicker and thank you to all the Commissioners. I want to start with Commissioner Chopra. An FTSE study found that one in five people had an error on at least one of their credit reports, and 5 percent of consumers had errors that were economically damaging to them.

In this business, even a small error rate means millions of Americans are denied jobs or housing. People pay more for credit or denied loans altogether. This industry can and does ruin lives with millions of simple errors. It can put innocent people in a hole that it's impossible to get out of.

So what do we need to do, Commissioner Chopra? Do you have the authorities that you need under statutory law? Is there more the FTC can be doing? Is there more that Congress can be doing?

CHOPRA: So Senator, when I asked people how much error do you tolerate in your bank account balance? The answer is 0 percent. But when it comes to credit reports, we see so many of them are rife with errors. And it's not just the credit reports, it's also tenant screening reports, it's also employment background check reports.

And increasingly, we have a new type of industry where companies are collecting massive amounts of data, data brokers, including the Big Tech companies that may be rife with errors as well. So this is like - has so much impact on our lives, and we need to make sure there's meaningful enforcement of the Fair Credit Reporting Act and all of our laws.

We are at the 50th anniversary of the FCRA. Some things have worked well, some things haven't. And I do think we need to have conversations about what more can be done to rein in the errors that are riddled throughout credit reports, and data brokers.

SCHATZ: Commissioner, excuse me, Chairwoman Slaughter, I want to thank you for the great work that the Commission does and on a bipartisan basis. My question is basic. Where are you with resources? From the from the authorizing and appropriating Committee's standpoint, a lot of us will be arguing about the policy changes that we all think are necessary, we'll be introducing legislation.

But it seems to me that you have plenty of authority and not enough technologists, and lawyers and analysts. And I'm wondering if you could tell me, what are your needs in order to execute on the laws that are already on the books?

SLAUGHTER: I really appreciate the question, Senator, and your support and interest. You're right, that resources is one of our major issues, maybe the biggest issue with which we struggle right now. When you think about the demands on the Commission, across the breadth of our mission areas, from competition through consumer protection, we are not, I think, as well equipped, as we even come close to needing to be to tackle them in meaningful ways.

We had 50 percent more employees at the beginning of the Reagan administration than we do today. And when you think about how our mission has grown data, privacy was not really a thing we talked about at the beginning of the Reagan administration. Competition looked entirely different from an enforcement perspective there and what the markets looked like was totally different. So, yes, we need a lot more resources.

And I just want to put a fine point on it. The absence of resources means that our enforcement decisions are harder. If we think that we have a real case or real law violation in front of us. But a settlement on the table that is maybe OK, that doesn't get the job done, we have to make difficult decisions about whether it's worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.

I think doing those suits is the right thing to do in a lot of cases. But we have to be open-eyed about what that means in terms of where else we would have to forego enforcement.

And then the last point I'd make to your point about expanding technologists and other kinds of expertise, I think that's also exactly right. We need to build out our analytical skill sets so that we are not just relying on attorneys and economists, but we have more technologists, more other kinds of analysis that we bring to bear on the cases that we bring and the investigations that we do. So we're really comprehensively understanding the markets that we are addressing.

SCHATZ: Thank you. And final quick question on Section 230 is increasingly used as a defense against the federal government and civil actions, which is hindering FTC and DOJ. There's something you think we can do about that, like pass the legislation that John Thune and I have introduced?

SLAUGHTER: Yes, I think that your legislation makes a really important step forward. And I'm particularly appreciative of the exemption that it gives for civil law enforcement. From 230 we've talked a couple times today about the ways 230 has been used to immunize platforms from dealing with illegal conduct that is happening on their sites and COVID scams are a great example of that problem. So yes, I think that would be helpful.

SCHATZ: Thank you very much.

CANTWELL: Thank you, Senator Schatz. Senator Thune.

THUNE: Thank you, Madam Chair. And Senator Schatz asked my first question. And -

SCHATZ: I am sorry, John.

THUNE: And Madam Chair, you acting Chair, you answered it. So I appreciate that we are really interested in moving something that would address Section 230 in a way that is thoughtful I think in terms of reforms, but do get at the shield that is used repeatedly.

And I would argue now with these platforms continue to moderate content in a way that wasn't intended when the law was passed back in 1996. So I think it's time for some reforms. And Senator Schatz would and I would love to get this, this schedule and voted on Madam Chair.

Let me then flip to this question. In 2018 I had requested the FTC use its Section 6 B authority to study consumer information data flows of large technology companies. And I was pleased to see that the FTC last February issue 6 B orders to several major tech companies.

Acting Chair Slaughter, could you provide an update on the Commission's work with respect to the six view orders issued to Facebook, Apple, and Alphabet including Google, Amazon, and Microsoft in February of 2020, as Congress continues to identify ways to protect consumer data?

Do you believe this initiative will help shed light on the data practices of these large tech companies and I would welcome the thoughts of any other commissioners as well.

SLAUGHTER: Thank you, Senator. I believe the 6 B which you're referring from last February actually targeted the acquisitions, the non reportable acquisitions of those companies. And I think that is also a really important area of commission attention and study.

When you see companies do many serial acquisitions that are below the HSR reporting threshold, we don't get to see each of those as they're happening. But the big picture of how those consolidations can happen, those roll ups happen as a result can be really meaningful for competition and merits our attention.

So that information has been gathered and analysis is ongoing. At the same time, last are not at the same time. A little bit after that last fall, we issued a separate 6 B instead of 6 B orders to nine social media and video streaming platforms looking at these questions of data collection and use and algorithms.

And I think we've referenced it a couple of times before that I think is going to provide really meaningful input to the commission that will help inform how we address these big picture questions that sound in both competition and consumer protection. And I'm hopeful that we can produce something that is also useful to Congress and the public because I think transparency here is important.

But of course in both of these cases, we have to be mindful of the limitations in Section 6B about what information we can make public. So my goal would be to make as much public as we legally can. But we have to of course mind our statutory limitations.

PHILLIPS: Sure. Senator, I did not support that ladder 6B, I felt that it was under inclusive as to the targets and over inclusive as to topic. I felt that it looked at too much at the same time. And so having to respect the anonymity that is legally required, we wouldn't be able to get the kind of data that we need on how the data flow.

But I absolutely agree that studying data flows in the economy from big firms also from small firms is a good use of our authority.

CHOPRA: Senator if I could just add part of this study will - should also solicit documents about including content curation, content moderation type practices, including how it's done algorithmically? My personal view is that that study is very important. But waiting for - we should not wait for it to conclude to fix Section 230.

I think Section 230 is an urgent priority to get reformed. And I do support as an especially as an initial step not subjecting civil law enforcement to firms to raise it that immunity as a defense.

THUNE: Right, thank you.

WILSON: Senator Thune, this is Christine Wilson, if I could just add. I do agree with what Acting Chairwoman Slaughter said about both of these 6B studies. I think it's important to look at the sub HSR acquisitions that are occurring not just in big tech, but in other areas as well.

For example, kidney dialysis and other industry roll ups that are occurring. And I fully support efforts of the FTC to do that. But I also echo the importance of the 6 B study regarding information flows. That is a study that Commissioners Chopra and Slaughter and I worked on, while Chairman Simons was still there.

I do think it is the single most important thing that the FTC is doing right now. And we will certainly use that information to inform both our enforcement and policy efforts as well as our technical assistance to Congress.

Perhaps this is one area where Commissioner Phillips and I disagree. I don't think we need to report out the information to make it useful to us. I think just having that information even if we can't publish it, because we can't necessarily anonymize it effectively is still going to help us refine our enforcement approach.

THUNE: Madam Chair, my time has expired. But if I could just ask if at some point, you could answer this question. I think Senator Tester perhaps asked a similar question already. But that's the enactment of the Traced Act which was, you know, we've passed in December of 2019.

You've seen a drop in robocall complaints, I understand. And I would at some point, if you could elaborate on some of the recent enforcement actions that you've taken with respect to robocalls that would be great.

CANTWELL: Thank you. Thank you, Senator Thune.

THUNE: Thank you, Madam Chair.

CANTWELL: We should follow up on that information both you know, at home and on mobile devices. So Senator Peters is next. And I think we have a couple of members in the queue Senator Rosen and Senator Hickenlooper.

I don't have anybody else on this side. If there are please let us know but Senator Peters, if you could ask your question and then call on Senator Rosen. I'm going to step out for just a minute. But if those you can get those two done, that would be great. Thank you. Senator Peters.

PETERS: Thank you, Madam Chair. Acting Chairwoman Slaughter earlier this month, Michigan's Attorney General shared a press release morning that Michiganders of a COVID-19 vaccine reward scam that was occurring in our state.

Individuals receiving the fraudulent post vaccine survey emails and texts were congratulating them for getting the vaccine. So they're now qualified for a free reward. All you got to do is pay for shipping and handling. Give me your credit card. And the reward never shows up.

And it was going on in a pretty wide basis. Report suggests the scammers may have targeted their victims using vaccine card selfies. But the vaccine cards don't have as you know via emails on them or phone numbers on them. So it's questionable whether or not that was the source.

So - but my question to you as the FTC investigated whether these scammers have purchased vaccine information or use databases of personal information like phone numbers and email addresses from data brokers in order to target these victims?

SLAUGHTER: Thank you, Senator. I can't comment on any particular fact pattern of investigation. But I will tell you that we are very much prioritizing investigating all complaints we hear about COVID related scams.

And working closely with state attorneys general and consumer advocates is really important for us as well not only to gather the information that we need to do appropriate law enforcement. But also get the information out to communities to make sure people don't fall for these scams to begin with. So we need to be doing both of those things.

PETERS: Well, I've introduced in the past and plan to reintroduce a Data Broker List Act, which is going to increase transparency. And security of personal data will require data brokers to register and maintain comprehensive security system you may be familiar with.

But my question to you is with increasing transparency around data brokers activity make it easier for the FTC to tracks scammers like the ones we're talking about, who are targeting innocent citizens.

SLAUGHTER: Thanks. And I apologize for not addressing the data broker point of your original question. When I was listening to it, it felt to me a little bit like an FTC issue spotting law school exam because you pointed to all sorts of different issues including the data broker universe, which operates in an extremely opaque background where people have known not only knowledge of but also choice about what information is collected by whom, how it's sold?

So I think transparency is absolutely a minimum step that we need there. We also need accountability for these companies. And we need consumers to have more authority to decide who gets to have their information in the first place so that we don't have this sort of infrastructure that feeds the advertising surveillance ecosystem in ways that are really harmful to your constituents and others.

PETERS: So I gather from that answer more transparency is something that we definitely need you fully support.

SLAUGHTER: Yes. Short answer, yes. More transparency would be great. Thank you, Senator.

PETERS: Well, no, I appreciate the law school answer as well. But definitely, we will continue to work on the transparency. I appreciate your efforts in that area. Another question for you is that the COVID-19 pandemic has also caused an increase in government contracts to address the needs for Americans as we recover from this crisis.

Unfortunately, there have been numerous instances of bad actors that have taken advantage of the emergency to improperly influence the federal procurement contracts and grantmaking that'll be using a number of unscrupulous tactics to try to get around some of the competitiveness provisions that exist in contracting practices.

I'm Chairman of the Homeland Security and Government Affairs Committee. We have oversight jurisdiction of federal contracts. And I want to certainly ensure that the federal procurement practices protect contractors and taxpayers from any kind of anti competitive activity.

So my question to you ma'am, is what is the FTC doing to enforce against contractors who are improperly influencing federal contracting?

SLAUGHTER: Thank you, Senator for the question. I think it's an interesting one, contracting government contracting in this particular context isn't one that comes up all the time. But I think as you describe it, misrepresentations and illegal conduct in association with getting government contracts is illegal and is something that we can and should investigate.

So wherever we can get complaints and get information, that's something we can apply our investigatory resources and law enforcement tools to. And so I would be happy to take a look at whatever complaints you can send our way.

CHOPRA: Senator, could I just add that I think the consolidation that we've seen in the defense industry has been very problematic for public procurement. We're spending more and more money for some of the same exact services. And making sure that the FTC polices those defense mergers with the D.O.D is absolutely critical. We also need to put a stop to bid rigging.

And I think actually that should be best done criminally. When contractors coordinate on their bids that - that is a vile - could be a criminal violation and it should be pursued as such.

PETERS: Right. I appreciate that. Thank you for all of you for your testimony here today. I'd like to recognize Senator Rosen for your questions.

ROSEN: Well, thank you, Senator Peters. And I really appreciate this oversight hearing today. And I want to thank Acting Chairwoman Slaughter and all the commissioners for being here and for their hard work.

But I'd like to build upon Senator Peters concerns of our consumer fraud as it relates to identity theft. Because last year when the commission appeared before the committee during the height of the pandemic, I shared my concerns with you about rampant consumer fraud, individuals and families are facing around the country, especially in my home State of Nevada.

Consumer fraud, especially acute because the pandemic hit our economy harder than almost any other state. The scammers capitalized on the hardship of the unemployment of Nevadans using stolen personal information derived from countless data security breaches, phishing attacks, impersonation scams that were meant to steal their unemployment relief and of course, then their stimulus payments.

So Chairwoman Slaughter, could you please update the committee on any new steps the FTC has taken to address the significant rise in identity theft during the Pandemic. And could you also maybe mention what additional - specific additional resources we could do to educate the public on these online threats and risks or what resources you might need to go after these fraudsters online?

SLAUGHTER: Thank you, Senator. Well first, I will start by thanking you in particular for the money that you appropriated to the FTC and the American rescue plan, which included specific allocations to do more COVID related scams enforcement and to do more consumer education.

We are working quickly to put that money to use to hire staff to expand our outreach because we want in the first instance to stop people from getting scammed to begin with. And then to go after scammers who still managed to find victims. And so I think that is incredibly important.

You're absolutely right that scammers are capitalizing on people's desperation. That is adding injury to the already profound pain and suffering that people are experiencing right now. And so we're very much committed to going after it.

You're right that identity theft has been one of the big areas, we've seen an increase. And it's one where we need to use the money that you have given us to expand our outreach and education, hire more staff and bring more enforcement actions.

ROSEN: Thank you. I want to build on identity theft and fraud, particularly as it's relating to our veterans Nevada's home to over 225,000 veterans nearly 20,000 service members. And certain scams are more likely to target members of our military or veterans according to the Nevada's Attorney General's Office.

The most common scams include fraudulent mortgage relief programs, high interest Military loan scams, of course again, identity theft. And Nevada ranked fourth in 2020 for the highest per capita cases of recorded identity theft.

So veterans in my state, of course, they can turn to the Nevada's Attorney General Office of Military Legal Assistance and they do get free legal assistance there to anybody who's active duty reserve National Guard. And they're doing excellent work to protect our veterans.

But Chairman Slaughter, could you share with us how your office is working with the Department of Veterans Affairs as well as our state, local and our nonprofit veteran's organizations to get the word out to address these illegal scams that are targeting our Military and our veterans, please?

SLAUGHTER: Thank you, Senator. You're absolutely right that veterans and military service members are a particular target of scams, in part because of how frequently they have to move around. And that is something that has been in the commission's attention for a long time.

But activating those partnerships with other enforcement agencies, whether it is the VA state attorneys general or as you pointed to, advocates on the ground is really important to make sure we're seeing everything we need to see.

We're reaching the people we need to reach just last month maybe the end of the month before the FTC launched the Community Advocate Center, which is designed in part to help us better connect with advocacy organizations that are reaching populations that we aren't reaching well through our online outreach or other programs that we have been using historically.

So that's one way that I think we want to particularly address veterans groups. Veterans are also a priority in our every community initiative, where we're trying to target enforcement efforts. So I appreciate the question and can commit that it will continue to be a priority for the agency.

ROSEN: I appreciate the hard work that you're doing. We have no shortage of folks who are going to try to take advantage of others and we'd have to beat them to the punch with education, information and resources. So I yield back my time. Thank you.

PETERS: Well, thank you, Senator Rosen. Senator Lummis, you are recognized for your questions.

LUMMIS: Thank you, Mr. Chairman. And thank you commissioners for appearing before the committee today. My questions are going to start to focus on bots. As you know, there's been a tremendous rise in e-commerce during COVID.

And during this time, there's also been a big spike in the use of bots. Bots were used to buy up entire supplies of physical goods that were made scarce during the pandemic such as toilet paper and other paper products. What is the FTC's level of concern related to these types of uses of bots? And this is for any Commissioner that chooses to answer.

CHOPRA: Senator, I appreciate the question. Anytime that technology is being deployed to corner the market and rip people off that, obviously is a huge concern. The commission currently enforces a law about ticket bots, which I'll let some of my colleagues talk about.

But here's what we're seeing on some of these platforms. People making mass purchases, engaging in price gouging and that's something we have to think about the incentives of those tech platforms to properly police. And we need to be working with state attorneys general to crack down on some of the worst of it. But obviously more authority would be useful in addressing that concern.

LUMMIS: So do you consider some of these practices to be anti competitive? And since consumerism in general is seems to be switching and perhaps over the long term to a more digital model? What can states do and what can you help states do to take on these issues?

CHOPRA: Well, generally speaking, Senator, when companies or scammers use, you know, to intercept any sort of computer system to allow them to purchase all goods and not let others fairly compete. That actually could be a violation of some of our computer fraud laws.

I'm happy to answer a question for the record when it comes to whether it's anti competitive. I believe there's certainly some real implications there. But we absolutely need to do more when it comes to working with states on this issue, because we need a free market that is competing on price and quality, not being cornered by criminals using technology.

LUMMIS: Thank you.

PHILLIPS: Senator, just briefly to add to what Commissioner Chopra said, I think one thing we do need to look out for and to work with states to look out for to the extent there are participants in the market that are using the guides of computer programs to work together to read bid rig or corner markets or whatever it is. Then you can very easily tip into anti competitive territory.

SLAUGHTER: And I will, I will just jump into to point out Commissioner Chopra reference the Ticket Bots Act. That gives us very specific and clear authority to go after the use of bots to circumvent disparate distribution measures in ticket markets. But we don't have that same clear direct authority in other kinds of markets.

So while I believe we should be thinking creatively and aggressively about how the FTC act generally or some of our other specific statutes might apply in any circumstance where Congress makes very clear that particular conduct is illegal and should be pursued under the FTC Act that makes it a lot easier for us to do that, especially when, as with the Bots Act, that is coupled with civil penalties, so that there is a real incentive for companies to comply.

LUMMIS: So do you think that a statutory response is warranted here?

SLAUGHTER: I think it would make it much easier for us to bring enforcement actions against the kind of conduct about which you are concerned.

LUMMIS: Okay. Thank you. Thank you very much. Are there particular sectors that are being targeted more than others for scams during COVID-19?

CHOPRA: So Senator, we've seen a huge uptick in all sorts of complaints, particularly when it comes to government benefits. I think because of the continuous data breaches over and over again, there's more ways for people to steal identities and to defraud the government and even steal people's identities.

You know, we know that our military service members and veterans report identity theft and other fraud at a much higher rate. We know that seniors are particularly vulnerable. So there are pockets of places where we know but there's so much we don't know.

So it's important, we really figure out the sources of where this fraud is propagating. I'm concerned that many of the widespread frauds are being trafficked online. And we need to look at how some of those large firms are policing their platforms.

LUMMIS: Well, thank you very much, commissioners. I appreciate your testimony today. Mr. Chairman, I yield back.

CANTWELL: Thank you, Senator Hickenlooper.

HICKENLOOPER: Thanks so much. I appreciate that Madam Chair and thank you for holding such an informative session today. I have another question for Ms. Slaughter, if I can. I understand that in 2018, the FTC's division of consumer and business education launched a cybersecurity education initiative directed and focused to support small businesses.

As a small business owner myself for many years, I've recognized how important it is that that small businesses be able to address some of the real challenges that we're facing right now. And that is - I think that's what the FTC was doing was a great step in that direction.

So Chair Slaughter, I'd love to hear what feedback you have for those small businesses for the FTC. In Colorado, we have a national center for cybersecurity; we set up independently in conjunction with the military, but the goal being to help small businesses but also local municipalities.

So what you've heard from small business, I'm going to try to think about how it might also apply to small you know, counties, small cities and towns as well. So anyway, does it - I guess I'd love to hear a little bit the feedback. And then if you have any plans on incorporating this feedback into some form of technical assistance that could go out to the small business community. Thanks.

SLAUGHTER: Thank you, Senator. You're right. Small businesses have been targeted, continue to be targeted. And we know that they can be real victims of scammers and bad actors. And anti competitive conduct the same way individuals can be.

And so protecting them is an important priority. And just as you reflect it that starts with educating them and outreach. So the programs that you referenced I think are important having to do with data security that start with security and stick with security education programs.

It can be helpful to small businesses because they can be especially susceptible to data vulnerabilities and things like ransomware attacks. And we want to avoid that happening to begin with. We also know that small businesses can be susceptible to scams related to government benefits.

So for example, the PPP program was something where we saw small business scams attached to at the beginning of the pandemic. So continuing to do outreach and education for small businesses, not only about cybersecurity, but also about scam protection remains a priority for us.

And again, I want to thank Congress for the recent money you appropriated to us to help do more of that, more of that outreach and education. And then sorry, let me just add, I also want to make sure that we are following up.

It's not just educating businesses for how to avoid scams, but we're following up to pursue companies that violate the law in ways that harm small businesses. Whether it is scammed or anti competitive conduct or anti competitive mergers, we need to be staying on top of those issues.

And doing everything we can to help small businesses not get hurt to begin with and then help them get relief if the injuries do occur.

CHOPRA: Senator, can I just add to the Acting Chairwoman. I totally agree that we also need to help small businesses get restitution when they've been harmed by some of these data breaches. Too often we basically think, well, let's just tell them to stop but don't do anything to help the victims.

More and more small businesses are in need of password managers, security keys and other protocols to help them protect themselves. And we need to do more when those small businesses are victimized when their confidential business information is stolen and to help them really compete.

HICKENLOOPER: Great, thank you. Thank you, Mr. Chopra. And I'll yield back my time. I think this is illustrative of how much has been done. But also how much work we start to do in terms of trying to safeguard small businesses, individuals, everybody from all these scams and fraudulent efforts to use cyber security to attack us.

CANTWELL: Thank you. Well, we're definitely - we will definitely have more time with the Commission on those issues in the future. So I thank all my colleagues for participating today. I don't know if we have anybody else.

But while we're doing I guess the last call with our colleagues to see if there is anybody else who is interested in making a question. I just want to clarify a couple things from the hearing first. We did give the commission anti manipulation authority.

You do have that authority for wholesale markets when we gave you that authority; we thought you would do a better job of policing the impacts of gas prices in certain market segments of the United States, which seemed to have perpetually high prices.

I don't - but so people as people talked about price gouging today, what do we think the differences are authority that you have that you haven't used and an authority on price gouging? Can somebody elaborate?

CHOPRA: So with respect to the energy market manipulation rule that covers I believe wholesale markets.

CANTWELL: Yes.

CHOPRA: The first authority has some - there's some parallelism to that. Most of our work has actually been in the retail gas area, we have limited authority on price gouging. And unlike the states, we don't have a general authority on price gouging.

And that's, that's really at the state level. But I agree, I think we need to be thinking hard about what our future footprint is in the energy markets to make sure that consumers have choice and energy is affordable.

CANTWELL: Well, as I mentioned, this has been a very successful tool for FERC (ph) as it relates to its market based authority for the FTC. I think what happened to us is, one summer we had the highest gas prices in the nation in Spokane, Washington. And we were like, why do we have highest gas prices in the nation? It made no sense.

And we asked the FTC to track that supply chain of why because a lot of people in the Puget Sound area we have high gas prices, some because well, one of the issues is all our oil is from the Alaska market.

And so it's an isolated market, and you can have issues with that. So it's not as effective as a more robust market. In this case, though Spokane wasn't getting his oil from Alaska. So the FTC, we asked you to do a report.

So all I'm saying is to me, we're still here today with lots of issues about price gouging and manipulation authority. I would hope you would look at that. And just we can get clarity in the future about what else we - what else we need.

So with that, I don't think we have anybody else in the queue. So the record will remain open for two weeks. I think all of the commissioners for being here you can see we had a robust session of questions from our colleagues on a variety of topics. But clearly 13 B is most pressing.

So we hope that we will resolve that issue one way or another. And so the authority will continue to rest with the FTC to take aggressive action. And we ask that Senators submit questions for the record by May 4th and that you help us by returning anything as quickly as possible, but later than two weeks after that date. So that concludes our hearing. Again, thank you to the Commissioners for your attendance. We're adjourned.