

**Prepared Statement of the  
Federal Trade Commission**

**Before the  
United States Senate  
Committee on the Judiciary  
Subcommittee on Antitrust, Competition Policy and Consumer Rights**

**“Oversight of the Enforcement of the Antitrust Laws”**

**Washington, D.C.**

**September 17, 2019**

Chairman Lee, Ranking Member Klobuchar, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Joe Simons, Chairman of the Federal Trade Commission, and I am pleased to testify on behalf of the Commission regarding some of our current competition enforcement activities and policy priorities.<sup>1</sup>

For over 100 years, the FTC has worked to ensure that our nation's markets are open, vibrant, and working for American consumers. We accomplish these goals through targeted yet vigorous enforcement of the nation's antitrust and consumer protection laws, and by using our unique set of research and policy tools. Though the U.S. economy is always evolving, the FTC's structure, research capacity, and committed staff enable us to protect consumers and promote competition in an ever-changing marketplace. This testimony highlights a number of recent FTC competition enforcement matters, including notable victories in stopping anticompetitive mergers and conduct, along with some of our more significant policy initiatives. We also briefly highlight some of our advocacy work, both here and abroad.

## **I. FTC Competition Enforcement**

The Commission promotes competition through a rigorous, fact-intensive approach to law enforcement. The FTC has jurisdiction over a wide swath of the economy and focuses its enforcement efforts on sectors that most directly affect consumers and their wallets, such as health care, pharmaceuticals, consumer products and services, technology, manufacturing, and energy. The agency shares primary jurisdiction with the U.S. Department of Justice's Antitrust Division ("DOJ") in enforcing the nation's antitrust laws.

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<sup>1</sup> This written statement represents the views of the Federal Trade Commission. The oral presentation and responses to questions by Chairman Simons are his own, and do not necessarily reflect the views of the Commission or of any other Commissioner.

## A. Maintaining Competition through Robust Merger Enforcement

One of the agencies' principal responsibilities is to prevent mergers that may substantially lessen competition. Under the Hart-Scott-Rodino ("HSR") Act, parties to certain mergers and acquisitions must notify the FTC and DOJ of their intent to merge, and must observe a statutory waiting period before consummating their transactions. In general, since FY 2013, these premerger filings have increased steadily; last year, for the second year in a row, we received just over 2,000 HSR filings.<sup>2</sup>

Most reported transactions do not raise significant competition concerns, and the agencies clear non-problematic transactions expeditiously. But when the evidence suggests that a proposed transaction is likely to harm competition, the Commission does not hesitate to intervene. In FY 2018, the agency challenged 22 mergers. Most of these matters were resolved with the parties through consent decrees that preserved pre-merger levels of competition.

Five of those mergers were contested and led to formal Commission challenges, where the agency's litigation staff compiled an impressive record of success. Federal courts granted preliminary injunctions in two cases;<sup>3</sup> the parties abandoned their mergers in the face of our court challenge in two other cases;<sup>4</sup> and an administrative law judge recently issued an initial

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<sup>2</sup> The agencies received 2,100 HSR filings in FY 2018, a slight increase from FY 2017, where we received 2,052. Apart from these two years, the last time HSR filings exceeded 2,000 was in FY 2007.

<sup>3</sup> *FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187 (D.D.C. 2018) (granting preliminary injunction); *FTC v. Wilh. Wilhelmsen Holding ASA*, 341 F. Supp. 3d 27 (D.D.C. 2018) (granting preliminary injunction). The agency also won a full administrative trial on the merits in the *Tronox* matter before an administrative law judge, before the parties ultimately settled with the agency. FTC Press Release, *FTC Requires Divestitures by Tronox and Cristal, Suppliers of Widely Used White Pigment, Settling Litigation over Proposed Merger* (Apr. 10 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-requires-divestitures-tronox-cristal-suppliers-widely-used>.

<sup>4</sup> J.M. Smucker Co. abandoned its planned acquisition of Conagra's Wesson cooking oil brand after the FTC filed suit in March 2018. FTC Press Release, *FTC Challenges Proposed Acquisition of Conagra's Wesson Cooking Oil Brand by Crisco Owner, J.M. Smucker Co.* (Mar. 5, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-challenges-proposed-acquisition-conagras-wesson-cooking-oil>. CDK abandoned its plans to purchase rival software vendor Auto-Mate after the Commission initiated litigation in March 2018. *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

decision supporting the Commission’s administrative complaint in the fifth matter.<sup>5</sup> These cases raised competition issues all across the U.S. economy, implicating markets for specialized software, medical devices, industrial chemicals, and familiar consumer staples.

FY 2019 has been no different, with the Commission obtaining significant relief in 20 merger matters and initiating litigation when necessary to prevent anticompetitive harm. For instance, the Commission filed a motion for a preliminary injunction to block Evonik Industries AG’s proposed \$625 million acquisition of PeroxyChem Holding company. We allege that the merger of the chemical companies would substantially reduce competition in the Pacific Northwest and the Southern and Central United States for the production and sale of hydrogen peroxide, a commodity chemical that has a variety of end uses including bleaching pulp and de-inking recycled paper and sterilizing food and beverage packaging. We have asked the court to enjoin the merger pending the outcome of an administrative trial, which is scheduled to begin January 22, 2020.

Earlier this month, the Commission issued an administrative complaint to block a merger between two of the “Big 4” largest title insurance underwriters in the nation in order to preserve the beneficial competition that plays out in every day real estate transactions across the United States. The complaint alleges that Fidelity National Financial, Inc.’s proposed \$1.2 billion acquisition of Stewart Information Services would substantially lessen competition in state markets for title insurance underwriting for large commercial transactions, and in several local markets for title information services.<sup>6</sup> Although the Commission has required the divestiture of

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<sup>5</sup> In December 2017, the FTC challenged the consummated merger of two manufacturers of prosthetic knees controlled by microprocessors. On May 7, 2019, an administrative law judge upheld the Commission’s administrative complaint against the merger. *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378, Op. of the A.L.J. (May 7, 2019), [https://www.ftc.gov/system/files/documents/cases/docket\\_9378\\_initial\\_decision\\_public\\_5-7-19.pdf](https://www.ftc.gov/system/files/documents/cases/docket_9378_initial_decision_public_5-7-19.pdf). This matter is currently on appeal before the Commission.

<sup>6</sup> *In re Fidelity National Financial, Inc.*, Dkt. 9385 (Sept. 6, 2019), <https://www.ftc.gov/enforcement/cases-proceedings/181-0127/fidelity-national-financialstewart-information-services>.

title plant assets in prior mergers involving Fidelity,<sup>7</sup> for the first time the Commission also alleged that the elimination of competition would likely harm customers seeking to purchase title insurance for large commercial transactions. The Commission authorized staff if necessary to seek preliminary relief to prevent the merger pending the administrative trial, which was scheduled to begin February 2020. The parties have since abandoned the transaction.<sup>8</sup>

In June, the FTC won an appeal in the Eighth Circuit, successfully defending the agency's prior victory in blocking an anticompetitive merger among health care providers.<sup>9</sup> This case represents the agency's fifth straight appellate victory involving health care provider consolidations, after a successful FTC challenge to another provider merger upheld by the Ninth Circuit,<sup>10</sup> as well as three hospital merger successes at the Third Circuit,<sup>11</sup> Sixth Circuit,<sup>12</sup> and Seventh Circuit.<sup>13</sup> This string of recent appellate victories across multiple circuits has solidified in case law the agency's analytical approach to these mergers, strengthening our ability to block anticompetitive mergers among health care providers.

The current state of the case law reflects the culmination of a lengthy effort by the FTC to protect U.S. health care consumers, using the full panoply of the agency's powers. For many years, the FTC has strategically pursued the systematic development of law and economics supporting vigorous antitrust enforcement in health care markets. Back in the 1990s, the antitrust agencies lost a series of court challenges to hospital mergers. In response, the FTC launched a

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<sup>7</sup> See, e.g., *In re Fidelity National Financial, Inc.*, Dkt. C-4425 (Dec. 24, 2013), <https://www.ftc.gov/enforcement/cases-proceedings/131-0159/fidelity-national-financial-inc-lender-processing-services>.

<sup>8</sup> FTC Press Release, *Statement of Bruce Hoffman, Director of FTC's Bureau of Competition, on Fidelity National Financial, Inc.'s Decision to Drop Proposed Acquisition of Stewart Information Services Corporation* (Sept. 10, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/statement-bruce-hoffman-director-ftcs-bureau-competition-fidelity>.

<sup>9</sup> *FTC v. Sanford Health*, 926 F.3d 959 (8th Cir. 2019), 2019 WL 2454218 (June 13, 2019).

<sup>10</sup> *St. Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys.*, 778 F.3d 774 (9th Cir. 2015).

<sup>11</sup> *FTC v. Penn State Hershey Medical Center*, 838 F.3d 327 (3rd Cir. 2016).

<sup>12</sup> *ProMedica Health System, Inc. v. FTC*, 749 F.3d 559 (6th Cir. 2014).

<sup>13</sup> *FTC v. Advocate Health Care Network*, 841 F.3d 460 (7th Cir. 2016).

merger retrospective study that provided detailed empirical support to discredit the prevailing economic methodology that courts had relied upon in ruling against the agencies in these cases.<sup>14</sup> Through a persistent, long-term approach to this problem, backed by the FTC's unique research capabilities, we eventually moved courts to embrace an empirically grounded, modern economic approach to analyzing the competitive effects of these transactions, and this important work continues to pay dividends today.

One increasing challenge for the Commission in litigating competition cases is the need to hire testifying economic experts. Vigorous enforcement requires the right tools, and qualified experts are a critical resource in every FTC competition case where litigation appears likely. But over the last five years, our annual expert costs for competition matters have essentially tripled. In FY 2014, the agency spent just \$4.84 million on expert fees in competition cases. In FY 2018, we spent \$15.84 million. For a small agency like the FTC, cost changes of this magnitude are challenging to absorb.

We are taking steps to manage these increasing expenses more aggressively, but long-term, structural changes likely mean that the cost of expert work will continue to grow.<sup>15</sup> Although the FTC has so far managed to allocate sufficient resources to fund the experts needed to support our cases, the agency is reaching the point where we will be unable to meet these needs without compromising our ability to fulfill other aspects of the mission. The Commission appreciates Congress's attention to our resource needs, including the need to continue to hire qualified outside experts to support effective antitrust enforcement.

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<sup>14</sup> Also under Chairman Tim Muris, the FTC conducted independent, empirical research and held a comprehensive series of hearings, which led to a seminal 2004 report by the agencies, *Improving Healthcare: A Dose of Competition: A Report by the Federal Trade Commission and the Department of Justice* (July 23, 2004) <https://www.ftc.gov/reports/improving-health-care-dose-competition-report-federal-trade-commission-department-justice>.

<sup>15</sup> Today, companies can create and store vast amounts of data about their operations. These richer datasets may enable our testifying experts to conduct higher quality empirical work, but their complexity also requires more review and analysis, and therefore much more time and effort by our experts and their support staff.

## **B. Combatting Anticompetitive Conduct in Pharmaceutical Markets**

The FTC maintains a robust program to identify and stop anticompetitive conduct, especially in the nation's critical markets for health care. For over 20 years, and on a bipartisan basis, the Commission has prioritized ending anticompetitive reverse payment agreements in pharmaceutical markets.<sup>16</sup> These so-called reverse payment agreements involve the branded drug supplier paying a generic firm to abandon its patent challenge and agree not to sell its lower-cost generic product for a period of time. The payment allows the branded company to ensure a period in which it can maintain higher market prices—increasing U.S. health care costs—without threat of generic competition.

In 2013, the Commission won a critical victory in *FTC v. Actavis*<sup>17</sup> when the Supreme Court clarified that pay-for-delay arrangements can violate the antitrust laws. This year brought another important milestone in the Commission's long running effort to combat anticompetitive reverse patent settlements: on the eve of trial, the defendants agreed to settle the original case that led to the Supreme Court's landmark *Actavis* decision. Although we are delighted with the progress on the reverse payment front, we recognize that the economic incentives to engage in this conduct remain in place today, necessitating continued antitrust enforcement. For example, in March of this year, the Commission unanimously held that Impax Laboratories and Endo Pharmaceuticals had entered into a reverse payment arrangement that delayed generic entry of Opana ER, an extended release opioid used for pain relief.<sup>18</sup>

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<sup>16</sup> See generally Fed. Trade Comm'n, Pay for Delay: When Drug Companies Agree Not to Compete, <https://www.ftc.gov/news-events/media-resources/mergers-competition/pay-delay> (gathering materials related to the history of the FTC's efforts on this issue).

<sup>17</sup> *FTC v. Actavis*, 570 U.S. 756 (2013).

<sup>18</sup> FTC Press Release, *FTC Concludes that Impax Entered Into Illegal Pay-for-Delay Agreement* (March 25, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-concludes-impax-entered-illegal-pay-delay-agreement>. Endo previously settled these allegations with the agency. FTC Press Release, *Endo Pharmaceuticals Inc. Agrees to Abandon Anticompetitive Pay-for-Delay Agreements to Settle FTC Charges; FTC Refiles Suits Against Generic*

At the time of the *Actavis* decision, critics of our enforcement work warned that using antitrust enforcement to stop reverse payment arrangements would have dire consequences; they cautioned that settlement of pharmaceutical patent disputes would become difficult or impossible, and eventually would reduce generic firms' investment in new products. But post-*Actavis* data tell a different story.<sup>19</sup> The agency's sustained attack on reverse payment arrangements has not chilled patent litigation settlements under the Hatch-Waxman Act. Rather, the number of pharmaceutical patent litigation settlements reported to the FTC has actually *increased* dramatically since *Actavis* was decided.<sup>20</sup> What has changed is that pharmaceutical companies use far fewer anticompetitive reverse payments in their patent litigation settlements. Back in FY 2006-2007, just under half of all reported settlements included some form of reverse payment provision.<sup>21</sup> In FY 2016, that number fell to just one settlement out of 232 reported.<sup>22</sup> In short, the FTC's efforts have been successful; low-cost generics come onto the market sooner, saving U.S. consumers billions of dollars.

In another matter involving pharmaceutical market competition, the agency recently announced a settlement with Reckitt Benckiser, resolving allegations related to that firm's efforts to thwart generic competition to the company's Suboxone product, used to treat opioid

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*Defendants* (Jan. 23, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/endo-pharmaceuticals-inc-agrees-abandon-anticompetitive-pay-delay>.

<sup>19</sup> For over 15 years, pharmaceutical companies have been required to report to us when they settle patent disputes so we can assess whether those settlements contain potentially problematic provisions. This information allows us to better track trends. These reporting requirements, which Congress included in the *Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, have been extraordinarily helpful not only in identifying potential enforcement matters, but also providing policymakers with greater transparency. Congress recently extended these reporting requirements to settlements involving biologics and biosimilars; this new information will be included in the FTC's annual reports beginning in FY 2019.

<sup>20</sup> In the three years before *Actavis*, the agency, on average, received 139 final settlements annually. In FY 2016, we received 232 final settlements. *See* Bradley S. Albert & Jamie Towey, *Then, now, and down the road: Trends in pharmaceutical patent settlements after FTC v. Actavis* (May 28, 2019), <https://www.ftc.gov/news-events/blogs/competition-matters/2019/05/then-now-down-road-trends-pharmaceutical-patent>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*



addiction.<sup>23</sup> The FTC’s complaint alleged that the company made knowingly false statements to the FDA, while engaging in a so-called “product hopping” scheme to shift existing patients away from the product about to face generic competition and onto another, more lucrative product that enjoyed patent protection and provided no legitimate incremental benefits. This is the first time the agency has brought a case under this theory.

To obtain FDA approval for a generic product, a generic pharmaceutical company must obtain samples of the corresponding brand product and conduct testing to verify that the generic version has the same therapeutic effect. Brand companies can use closed distribution systems and refuse to sell such samples to generics, thereby blocking the ability of companies to file a generic application. This conduct can occur in the context of FDA-mandated risk evaluation and mitigation strategies (“REMS”) safety programs, which by law are not to be used to prevent competition, or voluntary systems adopted by the brand company. The FTC supports legislative efforts to end this anticompetitive strategy while maintaining FDA’s ability to appropriately restrict the distribution of dangerous drugs.

The agency will continue to monitor this space carefully, and we will not hesitate to take vigorous action to protect the integrity of U.S. pharmaceutical markets where warranted.

### **C. Competition in Technology Markets**

New technologies offer real consumer benefits, but they can also raise complex and sometimes novel competition issues. The Commission has prioritized efforts to monitor, study, and, where necessary, take action to maintain competition in technology markets. Recently, the FTC voted unanimously to initiate litigation in federal court against Surescripts. The FTC’s

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<sup>23</sup> FTC Press Release, *Reckitt Benckiser Group plc to Pay \$50 Million to Consumers, Settling FTC Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone* (July 11, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/reckitt-benckiser-group-plc-pay-50-million-consumers-settling-ftc>.

complaint alleges that Surescripts is a multisided platform monopolist in two markets associated with electronically transmitted prescription information.<sup>24</sup> The complaint alleges that Surescripts structured its contracts to lock customers into exclusive arrangements, providing “loyalty” discounts that would make it unattractive for buyers to shift their business away to Surescripts’ rivals. Through a web of exclusive arrangements and other exclusionary conduct, the complaint alleges, Surescripts was able to protect its dominant position in these markets, to the detriment of U.S. consumers.

In another recent matter, the Commission ruled that 1-800 Contacts had unlawfully entered into agreements with rivals to restrict the scope of truthful, non-deceptive online advertising.<sup>25</sup> The conduct at issue involved agreements among competitors not to bid in auctions for certain keywords conducted by online search sites. As the Commission learned through its earlier research program on advertising restrictions, agreements among competitors to restrict otherwise lawful advertising can blunt competitive rivalry and thereby reduce competitive pressure.<sup>26</sup> The FTC continues to monitor closely the behavior of all participants in these and other critical technology markets.

To that end, the FTC’s Bureau of Competition recently announced a shift in internal resources to establish a Technology Task Force (“TTF”).<sup>27</sup> This specialized group includes seasoned career attorneys with significant prior experience in complex markets, including

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<sup>24</sup> FTC Press Release, *FTC Charges Surescripts with Illegal Monopolization of E-Prescription Markets* (Apr. 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/04/ftc-charges-surescripts-illegal-monopolization-e-prescription>.

<sup>25</sup> FTC Press Release, *FTC Commissioners Find That 1-800 Contacts Unlawfully Harmed Competition In On-Line Search Advertising Auctions, Restricting the Availability of Truthful Advertising to Consumers* (Nov. 14, 2018) <https://www.ftc.gov/news-events/press-releases/2018/11/ftc-commissioners-find-1-800-contacts-unlawfully-harmed>. Commissioner Noah Joshua Phillips dissented, and Commissioner Christine Wilson did not participate. This matter is currently on appeal.

<sup>26</sup> See, e.g., *Polygram Holding, Inc. v. FTC*, 416 F.3d 29 (D.C. Cir. 2005).

<sup>27</sup> FTC Press Release, *FTC’s Bureau of Competition Launches Task Force to Monitor Technology Markets* (Feb. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/02/ftcs-bureau-competition-launches-task-force-monitor-technology>.

markets for online advertising, social networking, mobile device markets, and technology platforms, and will include a technology fellow who will provide technical support to the task force. The TTF will be dedicated to monitoring competition in U.S. technology markets and taking enforcement action when warranted.

## **II. Competition Policy Work**

Although the Commission primarily relies on targeted law enforcement to protect competition and consumers, we also have a robust research and policy function. We do independent research; we conduct public workshops; and we share our expertise on competition issues with interested policymakers through our active amicus and advocacy programs.

Critical self-evaluation is an important part of our research agenda. For instance, in 2017, the FTC released a large retrospective study of remedies associated with mergers completed from 2006 through 2012.<sup>28</sup> The findings of this study helped to refine agency best practices related to the merger remedy process. The Commission's Bureau of Economics also has a longstanding program to perform retrospective studies of consummated mergers that began in the early 1980s but that recently has become considerably more active. Probably the most prominent of the FTC's retrospective studies so far is the hospital merger retrospective project, which, as discussed above, played a crucial role in reinvigorating the agency's hospital merger enforcement efforts.<sup>29</sup> FTC economists also have completed a number of retrospective analyses of horizontal and vertical transactions in health care, oil-related markets, consumer products markets, and retailing.<sup>30</sup>

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<sup>28</sup> See Fed. Trade Comm'n, *The FTC's Merger Remedies 2006-2012*, A Report of the Bureaus of Competition and Economics, January 2017, at [https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/pl43100\\_ftc\\_merger\\_remedies\\_2006-2012.pdf](https://www.ftc.gov/system/files/documents/reports/ftcs-merger-remedies-2006-2012-report-bureaus-competition-economics/pl43100_ftc_merger_remedies_2006-2012.pdf).

<sup>29</sup> See Farrell, Joseph, Paul A. Pautler, and Michael G. Vita, "Economics at the FTC: retrospective merger analysis with a focus on hospitals," 35 REV. OF INDUS. ORG. 369 (2009).

<sup>30</sup> See, e.g., Thomas Koch, Brett Wendling, & Nathan Wilson, *The Effects of Physician and Hospital Integration on Medicare Beneficiaries' Health Outcomes* (Bureau of Economics, Working Paper No. 337, July 2018); F. David

FTC studies also can inject competition considerations into broader policy questions of significant public interest. A recent example is the 2016 Patent Assertion Entity study,<sup>31</sup> which evaluated the business practices of patent assertion entities (“PAEs”), firms that acquire patents in order to attempt to generate revenue by licensing or suing accused infringers. The report provided several recommendations for patent litigation reforms.

The FTC continues to pursue important competition policy research. In November 2017, the Commission launched a project encouraging academic and industry research on the impact of certificates of public advantage (“COPAs”) on prices, quality, access, and innovation in health care services.<sup>32</sup> COPAs are state regulatory frameworks intended to replace health care provider competition and immunize mergers and collaborations from antitrust scrutiny. The Commission has been concerned about the impact of COPAs on consumers, and has undertaken a broad effort to gather additional evidence on their effects. In particular, the FTC has encouraged original empirical research. At the FTC’s June 2019 workshop, current and former staff from the Bureau of Economics discussed preliminary results from three original empirical studies of the price effects of mergers approved in the 1990s.<sup>33</sup>

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Osinski & Jeremy Sandford, *Merger Remedies: A Retrospective Analysis of Pinnacle/Ameristar* (Bureau of Economics, Working Paper, May 2018); Thomas Koch & Shawn W. Ulrick, *Price Effects of a Merger: Evidence from a Physicians’ Market* (Bureau of Economics, Working Paper No. 333, Aug. 2017); Daniel J. Greenfield, Nicholas M. Kreisler, & Mark D. Williams, *Simulating a Homogeneous Product Merger: A Case Study on Model Fit and Performance* (Bureau of Economics, Working Paper No. 327, Oct. 2015); Daniel Hosken, Luke Olson, & Loren Smith, *Do Retail Mergers Affect Competition? Evidence from Grocery Retailing* (Bureau of Economics, Working Paper No. 313, Dec. 2012) – Published in the *Journal of Economics and Management Strategy* (Spring 2018). Research conducted by staff of the Bureau of Economics is available at <https://www.ftc.gov/policy/reports/policy-reports/economics-research>, and a full list of all completed FTC merger retrospectives is available at [https://www.ftc.gov/system/files/attachments/press-releases/ftc-announces-agenda-14th-session-its-hearings-competition-consumer-protection-21st-century/list\\_of\\_be\\_retrospective\\_studies.pdf](https://www.ftc.gov/system/files/attachments/press-releases/ftc-announces-agenda-14th-session-its-hearings-competition-consumer-protection-21st-century/list_of_be_retrospective_studies.pdf).

<sup>31</sup> Patent Assertion Entity Activity, An FTC Study, October 2016 at [https://www.ftc.gov/system/files/documents/reports/patent-assertion-entity-activity-ftc-study/p131203\\_patent\\_assertion\\_entity\\_activity\\_an\\_ftc\\_study\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/patent-assertion-entity-activity-ftc-study/p131203_patent_assertion_entity_activity_an_ftc_study_0.pdf)

<sup>32</sup> FTC Press Release, *FTC Staff Seeks Empirical Research and Public Comments Regarding Impact of Certificates of Public Advantage* (Nov. 1, 2017) <https://www.ftc.gov/news-events/press-releases/2017/11/ftc-staff-seeks-empirical-research-public-comments-regarding>.

<sup>33</sup> See A Health Check on COPAs: Assessing the Impact of Certificates of Public Advantage in Healthcare Markets. (Jun. 18, 2019), at [https://www.ftc.gov/system/files/documents/public\\_events/1508753/slides-copa-jun\\_19.pdf](https://www.ftc.gov/system/files/documents/public_events/1508753/slides-copa-jun_19.pdf).

The FTC is in the process of concluding a prominent policy initiative: its *Hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century*. This extensive series of public hearings was convened to consider whether broad-based changes in the economy, evolving business practices, new technologies, and international developments warrant adjustments to competition and consumer protection law, enforcement priorities, and competition policy. The current set of hearings was modeled after a similar effort in 1995 by former FTC Chairman Bob Pitofsky, which was the first step in establishing the FTC as a modern center for “competition R&D.”

The FTC worked to feature a wide variety of perspectives in these hearings. We invited legal and economic academics and consultants, public interest groups, public advocacy groups, and representatives of businesses and industries to our hearing sessions. By the conclusion of our final hearing on June 12, 2019, we had convened 14 sessions over 23 days, with thousands of people attending via webcast or in person. To date, we have received close to 950 unique comments on the covered topics. All the information related to the hearings—the transcripts, comments, presentations, and questions—is available on the FTC website. This large corpus of material on the critical issues facing modern competition and consumer protection policy has already created a valuable resource for future research by the agency, interested academics, practitioners, and policymakers.

At this stage, we are distilling the large volume of stakeholder input and generating further output, such as reports, statements, guidance, and speeches. This work will be forward-looking and will both support the Commission’s enforcement mission and identify additional policy initiatives that may be important in shaping the future development of antitrust law. We expect to begin releasing some of this output in the late fall or winter of 2019.

Through these hearings, the Commission intends to help formulate an enduring approach to current questions about antitrust and consumer protection enforcement. We recognize that, in some areas of the law, some now question the policies that have served as the basis for the bipartisan consensus. Particularly with respect to certain antitrust issues where this consensus has been questioned, we believe these hearings were a valuable investment of our resources to determine whether adjustments are necessary.

### **III. International Engagement – Competition**

In support of its competition mission and domestic antitrust enforcement, the FTC engages in significant work with international counterparts and organizations. The FTC works regularly with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures. During the most recently completed fiscal year, the FTC cooperated on 43 merger and anticompetitive conduct investigations of mutual concern with counterpart agencies from 19 jurisdictions. Many of these matters involved cooperation with several agencies to achieve effective, sound, and consistent outcomes. For example, in the recent merger of industrial gas suppliers Praxair, Inc. and Linde AG, Commission staff worked cooperatively with staff from the antitrust agencies of Argentina, Brazil, Canada, Chile, China, Colombia, the European Union, India, Korea, and Mexico to analyze the proposed transaction and potential remedies.

The U.S. antitrust agencies also promote convergence toward sound policy through bilateral engagement with foreign competition agencies and by playing a leadership role in multilateral competition organizations. In 2019, the FTC and DOJ continued to engage with counterparts in China to discuss procedural fairness, enforcement of monopolization laws, and the antitrust treatment of the exercise of intellectual property rights. We held high-level bilateral

meetings with colleagues from several competition authorities around the world, including those from Canada, the European Union, Japan, Korea, and Mexico. Consistent with our objectives of promoting sound practices and processes, our discussions covered timely issues, including digital platforms, vertical mergers, procedural fairness, and the antitrust treatment of the exercise of intellectual property rights.

The FTC plays a central role in key multilateral fora dedicated to promoting sound competition policy and enforcement around the world. The FTC serves on the Steering Group of the 139-member International Competition Network (“ICN”) and is active in ICN working groups that draft recommendations. For example, the FTC led the development of the ICN Recommended Practices for Investigative Process—the most comprehensive consensus best practices for competition agencies on providing due process in antitrust investigations. We also lead the ICN’s efforts to promote implementation of its many work products on key topics such as merger review, the analysis of dominant firm conduct, and the conduct of effective and fair investigations. We will have additional opportunities to showcase successful U.S. experiences when the U.S. antitrust agencies jointly host the ICN’s annual conference next year.

The FTC works with other U.S. government agencies to address in a coordinated and effective manner competition issues that implicate broader U.S. policy interests, such as the protection of intellectual property and non-discriminatory treatment of U.S. companies. For example, the FTC has been part of the interagency group that addressed investigative procedure issues under the Korea-U.S. free trade agreement, and worked with the Departments of Treasury, Justice, and State, among others, on developing G7 and G20 statements to achieve outcomes that furthered U.S. policy and interests involving competition in the digital economy.

#### **IV. Conclusion**

The FTC remains committed to marshalling its resources efficiently in order to protect consumers and promote competition, to anticipate and respond to changes in the marketplace, and to meet current and future challenges. We look forward to continuing to work with this Subcommittee and Congress, and we would be happy to answer your questions.