

**Prepared Statement of the
Federal Trade Commission**

**Before the
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
of the Judiciary Committee
United States House of Representatives**

“Oversight of the Antitrust Enforcement Agencies”

**Washington, D.C.
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Chairman Marino, Ranking Member Cicilline, 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 and discuss some of our current competition enforcement activities and policy priorities.¹

For over 100 years, the FTC has worked to ensure that American markets are open, vibrant, and unencumbered by unreasonable private or public restraints. With its dual missions to promote competition and protect consumers, the FTC applies antitrust and consumer protection law in a dynamic economy that is rapidly responding to new technology. The FTC is committed to understanding how technological developments and globalization can and should impact our law enforcement, research, and advocacy. As commerce and technology continue to evolve, companies may find newer ways to engage in unfair and deceptive practices that cause substantial consumer harm. Companies may also merge or engage in other conduct that harms, or threatens to harm, competition. Our agency tackles these challenges primarily through targeted law enforcement, although we also take full advantage of our unique set of policy tools. Our bipartisan administrative structure, extensive research capabilities, and committed staff enable the FTC to continue to meet its mandate of protecting consumers and competition in an ever-changing marketplace.

¹ 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 any other Commissioner.

This testimony highlights a number of recent FTC competition initiatives,² including notable victories stopping anticompetitive mergers and conduct, public hearings on a variety of competition and consumer protection issues, and advocacy both domestically and abroad.

I. FTC Competition Enforcement

The Commission seeks to promote 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 consumer products and services, energy, health care, high technology, and manufacturing. The agency shares primary jurisdiction with the Department of Justice in enforcing the nation's antitrust laws.

A. Maintaining Competition through Robust Merger Enforcement

One of the agency's principal responsibilities is to prevent mergers that may substantially lessen competition. Premerger filings under the Hart-Scott-Rodino ("HSR") Act have increased steadily since FY 2013, and in FY 2017, the agencies received over 2,000 HSR filings for the first time since 2007, bringing filings in the past fiscal year to the average over the past 20 years.³ The FTC's work to challenge anticompetitive mergers has placed a considerable strain on the Commission's resources, which were already limited. Although most reported transactions do not

² For an overview of the FTC's efforts to protect consumers from unfair or deceptive acts or practices, see the Commission's recent testimony before the Senate Committee on Commerce, Science and Transportation Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security (Nov. 27, 2018), https://www.ftc.gov/system/files/documents/public_statements/1423835/p180101_commission_testimony_re_oversight_senate_11272018_0.pdf.

³ In FY 2017, the agencies received notice of 2,052 transactions, compared with 1,326 in FY 2013 and 2,201 in FY 2007. The 20-year average extends back to FY 1998. Effective February 1, 2001, the HSR Act was amended to increase the size-of-transaction threshold from \$15 million to \$50 million. After that change took effect, the number of filings dropped from 4,926 in FY 2000 to 2,376 in FY 2001 and 1,187 in FY 2002. See FTC/DOJ Hart-Scott-Rodino Annual Report Fiscal Year 2007 at 2 n.2, https://www.ftc.gov/sites/default/files/documents/reports_annual/30th-report-fy-2007/hsrreportfy2007_0.pdf. For historical information about HSR filings and U.S. merger enforcement, see the joint FTC/DOJ Hart-Scott-Rodino annual reports, <https://www.ftc.gov/policy/reports/policy-reports/annual-competition-reports>.

raise competitive concerns and are cleared expeditiously by the agencies, when available evidence gives the Commission reason to believe that a proposed merger likely would be anticompetitive, the Commission does not hesitate to intervene. Since the beginning of FY 2017, the Commission has challenged 48 mergers. Although many of these cases were resolved through settlements, in the last year alone, the Commission sued to block five mergers, and each of these matters required a significant commitment of resources to prepare for litigation. Two of those challenges ended successfully when the parties abandoned the transactions after the Commission initiated litigation.⁴ For instance, after the FTC voted to initiate litigation to block the transaction, CDK Global, Inc. and Auto/Mate, Inc. abandoned a proposed merger that likely would have substantially reduced competition for the sale of automobile dealer management system software.⁵ In July, the district court in Washington, D.C. issued a preliminary injunction blocking Wilhelmsen Maritime Services' proposed acquisition of Drew Marine Group, a merger that would have combined the world's two largest suppliers of water treatment chemicals used by

⁴ Fed. Trade Comm'n, 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>; *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

⁵ *In re CDK Global & Auto/Mate*, Dkt. 9382 (Mar. 20, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0156/cdk-global-automate-matter>.

tankers, container ships, and cruise ships.⁶ Three other merger cases are still pending in litigation.⁷

As noted above, the Commission continues to resolve most horizontal merger challenges through negotiated settlements requiring divestitures sufficient to restore lost competition. In the past year, for example, the FTC reviewed a number of horizontal mergers involving retail gas stations and convenience stores, and required divestitures to maintain competition in more than 160 local gasoline markets.⁸ The Commission also took action to prevent harm from horizontal mergers involving a wide variety of products (such as agricultural chemicals,⁹ cement,¹⁰ industrial gases,¹¹ medical instruments,¹² and pharmaceuticals¹³) and services (such as air ambulance services,¹⁴ casino services,¹⁵ and specialty veterinary services¹⁶).

⁶ *FTC v. Wilhelmsen*, No. 1:18-cv-00414 (D.D.C. July 21, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0161/wilhelm-wilhelmsen-et-al-ftc-v>.

⁷ *FTC v. Sanford Health*, No. 17-3783 (8th Cir.) (merging parties' pending appeal of the district court's grant of a preliminary injunction), <https://www.ftc.gov/enforcement/cases-proceedings/171-0019/sanford-health-ftc-state-north-dakota-v>; *In re Otto Bock HealthCare North America, Inc.*, Dkt. 9378 (Dec. 20, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>; *In re Tronox Ltd.*, Dkt. 9377 (Dec. 5, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>. The district court recently issued a preliminary injunction to prevent the consummation of the merger of Tronox and Cristal, pending the outcome of the Commission's administrative proceedings. *FTC v. Tronox Ltd.*, No. 1:18-cv-01622 (D.D.C. Sept. 5, 2018).

⁸ *Marathon Petroleum Corp. and Express Mart*, No. 181-0152 (Oct. 25, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0152/marathon-petroleum-et-al>; *Alimentation Couche-Tard and CST Brands*, C-4618 (June 26, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0207-docket-no-c-4618/alimentation-couche-tard-cst-brands>; *Alimentation Couche-Tard and CrossAmerica Partners*, C-4635 (Dec. 15, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1710184/alimentation-couche-tard-crossamerica-partners-matter>; *Alimentation Couche-Tard and CrossAmerica Partners*, C-4631 (Nov. 22, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/1710207/alimentation-couche-tard-crossamerica-partners>; *Seven & iHoldings Co.*, C-4641 (Jan. 19, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0126-c-4641/seven-i-holdings-7-eleven-sunoco>.

⁹ *Agrium Inc. et al.*, C-4638 (Dec. 27, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0232/agrium-inc-potash-corporation-nutrien-ltd>.

¹⁰ *CRH plc*, C-4653 (June 14, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0230-c-4653/crh-plc>.

¹¹ *Linde AG and Praxair, Inc.*, No. 171-0068 (Oct. 22, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0068/linde-ag-praxair-inc>.

¹² *Abbott Laboratories and Alere Inc.*, C-4625 (Sept. 28, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/161-0084/abbott-laboratories-alere-inc>.

The FTC also reviews vertical mergers and, when appropriate, acts to prevent harm to competition. For example, the Commission reviewed the merger of Northrop Grumman, a leading provider of missile systems to the Department of Defense (DOD), and Orbital ATK, a key supplier of solid rocket motors (SRM). The FTC was concerned that the acquisition would provide Northrop with the incentive and ability to harm competition for missile contracts by either withholding access to Orbital's SRMs or increasing SRM prices to competitors. As a result, competitors would be forced to raise the prices of their missile systems, invest less aggressively to win missile programs, or decide not to compete at all, which would decrease competitive pressure on Northrop. We also were concerned that the acquisition would create a risk that the proprietary, competitively sensitive information of a rival SRM supplier supporting Northrop's missile system business could be shared with Northrop's vertically integrated SRM business. The FTC worked closely with the DOD in our review, and our proposed order imposes non-discrimination requirements and a firewall to preserve competition.¹⁷

One increasing challenge for the Commission in litigating competition cases is the need to hire testifying economic experts. Qualified experts are a critical resource in all of the FTC's competition cases heading toward litigation. The FTC thus far has managed to allocate sufficient resources to fund the experts needed to support its cases and continues to develop strategies for

¹³ *Amneal Holdings and Impax Laboratories*, C-4650 (Apr. 27, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0017-c-4650/amneal-holdings-impax-laboratories-matter>.

¹⁴ *Air Medical Group, et al*, C-4642 (Mar. 7, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0217-c-4642/air-medical-group-kkr-north-america-amr-holdco>.

¹⁵ *Penn National Gaming and Pinnacle Entertainment*, No. 181-0011 (Oct. 1, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0011/penn-national-gaming-pinnacle-entertainment-matter>.

¹⁶ *Mars, Inc. and VCA Inc.*, C-4633 (Aug. 30, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/171-0057/mars-incorporated-vca-inc>.

¹⁷ *Northrop Grumman and Orbital ATK*, C-4652 (June 5, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/181-0005-c-4652/northrop-grumman-orbital-atk>.

managing expert costs more effectively. But the agency is reaching the point where it will be unable to meet these needs without compromising its ability to fulfill other aspects of the agency's mission. The Commission appreciates Congress's attention to its resource needs, including the need to continue to hire outside experts to support effective antitrust enforcement.

Finally, the Commission is committed to efficient and transparent merger review. In response to concerns that merger investigations are taking longer, the Bureau of Competition has developed a more robust system of tracking key milestones in the merger review process to determine whether this perception has merit and, if so, why some reviews may be taking longer. Armed with better information, the Bureau of Competition will assess what might be done to make the merger review process more efficient and less burdensome, while still ensuring the right outcome for consumers. The Bureau of Competition also has released a Model Timing Agreement, which adds greater transparency and certainty to the merger review process.¹⁸

B. Combatting Anticompetitive Conduct in Health Care Markets

The Commission maintains a robust program to identify and stop anticompetitive conduct, especially in critical health care markets. For over twenty years and on a bipartisan basis, the Commission has prioritized ending anticompetitive reverse-payment agreements in which a brand-name drug firm pays its potential generic rival to give up its patent challenge and agree not to launch a lower cost generic product. Following the U.S. Supreme Court's 2013 decision in *FTC v. Actavis, Inc.*,¹⁹ the Commission is in a much stronger position to challenge agreements of this type. For example, on remand the district court hearing the *Actavis* case

¹⁸ Bruce Hoffman, *Timing Is Everything: The Model Timing Agreement* (Aug. 7, 2018), <https://www.ftc.gov/news-events/blogs/competition-matters/2018/08/timing-everything-model-timing-agreement>.

¹⁹ 570 U.S. 756 (2013).

denied the defendants' motion for summary judgment, clearing the way for trial.²⁰ In addition, since the Supreme Court decided *Actavis*, the FTC has obtained a landmark \$1.2 billion settlement from the maker of sleep disorder drug Provigil,²¹ and other manufacturers have agreed to abandon anticompetitive agreements of this type.²² Currently, the FTC has three additional matters pending in litigation challenging reverse payment agreements.²³

The Commission also has challenged anticompetitive unilateral conduct by drug manufacturers to maintain a monopoly, such as abuse of government process through sham litigation or repetitive regulatory filings intended to slow the approval of competitive drugs.²⁴ Here too, the Commission recently had a major victory when a federal court ruled on the basis of a full trial record that AbbVie Inc. used sham litigation to illegally maintain its monopoly over the testosterone replacement drug Androgel, and ordered \$493.7 million in monetary relief to those who were overcharged for Androgel as a result of AbbVie's conduct.²⁵ This case represents the first time any court has held that sham litigation violated Section 2 of the Sherman Act since

²⁰ *FTC v. Actavis, Inc.*, No. 1:09-MD-2084 (N.D. Ga. Jun. 14, 2018).

²¹ Fed. Trade Comm'n, Press Release, *FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected by Anticompetitive Tactics* (May 28, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

²² Joint Motion for Entry of Stipulated Order for Permanent Injunction, *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/allergan-plc-watson-laboratories-inc-et-al>; Stipulated Order for Permanent Injunction, *FTC v. Teikoku Pharma USA, Inc.*, No. 16-cv-01440 (E.D. Pa. Mar. 30, 2016), <https://www.ftc.gov/enforcement/cases-proceedings/141-0004/endo-pharmaceuticals-impax-labs>.

²³ *In re Impax Laboratories, Inc.*, Dkt. 9373 (complaint filed Jan. 23, 2017); *FTC v. Allergan plc*, No. 17-cv-00312 (N.D. Cal. Jan. 23, 2017); Notice of Appeal, *FTC v. AbbVie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al> (appealing dismissal of reverse payment claim to Third Circuit).

²⁴ *FTC v. AbbVie Inc.*, No. 14-cv-5151 (E.D. Pa. Sept. 8, 2014), <https://www.ftc.gov/enforcement/cases-proceedings/121-0028/abbvie-inc-et-al>; *FTC v. Shire ViroPharma Inc.*, No. 17-cv-131(D. Del. Feb. 7, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

²⁵ Fed. Trade Comm'n, Press Release, *Statement of FTC Chairman Joe Simons Regarding Federal Court Ruling in FTC v. AbbVie* (June 29, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/statement-ftc-chairman-joe-simons-regarding-federal-court-ruling>.

the U.S. Supreme Court first recognized this legal theory in *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, and it is a significant win for consumers.²⁶

Nevertheless, the FTC's antitrust enforcement program has faced some setbacks. In 2017, the FTC filed a complaint in federal district court charging Shire ViroPharma Inc. with violating the antitrust laws by abusing government processes through a campaign of serial, repetitive, and unsupported filings with the U.S. Food and Drug Administration (FDA) and courts to delay the FDA's approval of generic Vancocin capsules.²⁷ Vancocin capsules are used to treat *C.difficile*-associated diarrhea, or CDAD, a sometimes life-threatening bacterial infection. The FTC alleged that Vancocin capsules are not reasonably interchangeable with any other medications used to treat CDAD, and that because of ViroPharma's actions, consumers and other purchasers paid hundreds of millions of dollars more for their medication.

In March of this year, the U.S. district court in Delaware ruled that the Commission had stated a valid claim that ViroPharma's repetitive and baseless petitions to the FDA amounted to sham petitioning that was not protected activity under the *Noerr-Pennington* doctrine.²⁸ Unfortunately, the court nevertheless dismissed the FTC's monopolization complaint, ruling that the agency failed to adequately plead an imminent violation of antitrust law and thus was not entitled to file suit under Section 13(b) of the FTC Act. The Commission has appealed this ruling to the Third Circuit, noting that no court in the 45 years since the enactment of Section 13(b) has

²⁶ 508 U.S. 49 (1993). The Commission also recently filed an amicus brief in private litigation involving counterclaims of sham litigation, urging the court not to expand *Noerr-Pennington* protection to all patent infringement suits brought under the provisions of the Hatch-Waxman Act. Fed. Trade Comm'n Brief as *Amicus Curiae*, *Takeda Pharmaceutical Co. v. Zydus Pharmaceuticals*, (D.N.J. filed July 2, 2018), <https://www.ftc.gov/policy/advocacy/amicus-briefs/2018/06/takeda-pharmaceutical-company-limited-et-al-v-zydus>.

²⁷ *FTC v. Shire ViroPharma, Inc.*, No. 1:17-cv-00131 (D. Del. Feb. 7, 2017), <https://www.ftc.gov/enforcement/cases-proceedings/121-0062/shire-viropharma>.

²⁸ *FTC v. Shire ViroPharma Inc.*, 2018 WL 1401329 (D. Del. Apr. 12, 2018).

required the FTC to meet this stringent imminence standard.²⁹ In particular, and as we argued in our appeal brief, the district court failed to follow well-established precedent holding that injunctive relief may be awarded even after unlawful conduct has ceased so long as there is a reasonable likelihood of recurrence.

The Commission is also attentive to situations where health care firms engage in conduct that restrains competition for employees, such as anticompetitive information exchanges and other collusive practices by employers in labor markets. For example, in July of this year, the FTC charged three parties—a Texas company that provides therapists to home health agencies, the company’s owner, and the former owner of a competing staffing company—with violating the antitrust laws. The Commission alleged that the parties violated the FTC Act by agreeing to reduce rates paid to therapists and by inviting other competitors to join their collusive scheme.³⁰ Fortunately, the FTC and Texas Attorney General were successful in stopping this conduct quickly. Just as American consumers deserve robust competition among producers who set prices for the goods they buy, American workers deserve robust competition among potential employers who determine their wages. This case highlights an important message of the October 2016 joint DOJ/FTC guidance for human resources professionals: Competition is essential to well-functioning markets, including job markets.³¹

²⁹ *FTC v. Shire ViroPharma Inc.*, No. 18-1807 (3d Cir. 2018).

³⁰ *Your Therapy Source*, No. 171-0134 (July 31, 2018), <https://www.ftc.gov/enforcement/cases-proceedings/171-0134/your-therapy-source-neeraj-jindal-sheri-yarbray>.

³¹ Fed. Trade Comm’n & U.S. Dep’t of Justice, *Antitrust Guidance for Human Resource Professionals* (Oct. 2016), <https://www.ftc.gov/public-statements/2016/10/antitrust-guidance-human-resource-professionals-department-justice>. The agencies also published a list of red flags for employment practices to help identify potential antitrust law violations.

C. Monitoring Technology Firms

From search platforms and social media to smart appliances, smart cars, and mobile devices, the widespread use of technology and data is changing not only the way we live, but also the way firms operate. Although many of these changes offer consumer benefits, they also raise complex and sometimes novel competition issues. Given the important role that technology companies play in the American economy, it is critical that the Commission—in furthering its mission to protect consumers and promote competition—not only understand current and developing business models, but also scrutinize incumbents’ conduct to ensure that they abide by the same rules of competitive markets that apply to any company. When appropriate, the Commission will take action to counter anticompetitive transactions and conduct by technology firms.³²

II. Competition Policy Work

Although vigorous law enforcement is the Commission’s primary means to promote competition and protect consumers, we take advantage of a variety of research and advocacy tools to stay abreast of new trends in our dynamic economy, study business developments, and advocate for policies that eliminate unreasonable restrictions on competition.

In June, we announced a new series of public hearings—*Hearings on Competition and Consumer Protection in the 21st Century*—to consider whether broad-based changes in the economy, evolving business practices, new technologies, and international developments warrant

³² See, e.g., *In re DraftKings, Inc.*, No. 161-0174 (June 19, 2017), https://www.ftc.gov/system/files/documents/cases/docket_no_9375_draftkings_fanduel_part_3_complaint_final_redacted_public_version.pdf.

adjustments to competition and consumer protection law, enforcement priorities, and policy.³³ This initiative is modeled on a similar effort in 1995 by former FTC Chairman Bob Pitofsky, which was the first step in establishing the FTC as a key modern center for competition “R&D.” That effort also led to a well-received two-volume staff report, *Anticipating the 21st Century*, which presented analyses and recommendations on competition and consumer protection policy, respectively.³⁴ Similarly, through the series of hearings that began on September 13th, the Commission is devoting significant resources to refresh and, if warranted, renew its thinking on a wide range of cutting-edge competition and consumer protection issues.³⁵ The hearings kicked off at Georgetown University Law Center, with opening sessions on market competitiveness, enforcement policy, and the regulation of consumer data. There have been additional sessions on a wide range of competition and consumer protection topics, such as the role of the consumer welfare standard in U.S. antitrust law; privacy, big data and competition; innovation and intellectual property policy; monopsony power; the antitrust framework for the acquisition of nascent competitors; vertical merger analysis; and algorithms, AI and predictive analysis. To date, we have heard from more than 200 panelists and received more than 700 public comments. Future sessions have been announced that will focus on common ownership, data security, and consumer privacy, and will continue through early 2019. The Commission approaches this effort

³³ Fed. Trade Comm’n, *Hearings on Competition and Consumer Protection in the 21st Century*, <https://www.ftc.gov/policy/hearings-competition-consumer-protection>; see also Fed. Trade Comm’n, Press Release, *FTC Announces Hearings On Competition and Consumer Protection in the 21st Century* (June 20, 2018), <https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st>.

³⁴ FED. TRADE COMM’N STAFF, *ANTICIPATING THE 21ST CENTURY: COMPETITION AND CONSUMER PROTECTION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE* (1996).

³⁵ See Prepared Remarks of Chairman Simons Announcing the Competition and Consumer Protection Hearings (June 20, 2018), https://www.ftc.gov/system/files/documents/public_statements/1385308/prepared_remarks_of_joe_simons_announcing_the_hearings_6-20-18_0.pdf.

with an open mind, and expects to use what we learn from the hearings to more effectively carry out our mission to protect consumers and competition.

The Commission will continue to look for opportunities to issue joint guidance with our antitrust partners at the Department of Justice. Last year, the agencies issued updated Antitrust Guidelines for the Licensing of Intellectual Property, which explain how the federal antitrust agencies evaluate licensing and related activities involving patents, copyrights, trade secrets, and know-how. This update modernizes the agencies' 1995 IP Licensing Guidelines, ensuring that they continue to provide useful guidance to the public and the business community about the agencies' enforcement approach to intellectual property licensing.

The FTC also engages in competition advocacy, providing comments to state legislatures, state and federal agencies, and other policymakers. Competition advocacy is particularly effective in addressing market restraints imposed by governments themselves, such as excessive state occupational licensing requirements, where the likely effects on competition and other social objectives like employment may not be adequately understood by policy makers.³⁶ For example, the FTC's Economic Liberty Task Force recently released a policy paper entitled *Policy Perspectives: Options to Enhance Occupational License Portability*. This paper assesses various approaches that state licensure boards, professional organizations, state legislatures, and others may consider in developing effective licensure portability initiatives.³⁷ American workers, employers, consumers, and our economy as a whole will benefit from eliminating unnecessary

³⁶ See Prepared Statement of the Federal Trade Commission on Competition and Occupational Licensure before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Judiciary Committee, House of Representatives, Washington D.C. (Sept. 12, 2017), https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf.

³⁷ Fed. Trade Comm'n, Press Release, *FTC Staff Report Examines Ways to Improve Occupational License Portability Across State Lines* (Sept. 24, 2018), <https://www.ftc.gov/news-events/press-releases/2018/09/ftc-staff-report-examines-ways-improve-occupational-license>.

and overbroad licensing requirements that impose additional costs, restrict competition, and are unnecessary to protect consumer health and safety.

The FTC also relies on its expertise in health care competition to identify policies that unnecessarily burden competition to the detriment of consumers. For instance, the FTC recently responded to the Department of Health and Human Services' request for comment on its *Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs*, focusing on two topics: the misuse of Risk Evaluation and Mitigation Strategies (REMS) programs and the inadvertent creation of new barriers to biologic competition. The FTC supports well-crafted regulatory and legislative actions to correct the misuse of REMS programs. Today, brands can misuse REMS restrictions to prevent or delay generic firms from obtaining FDA approval for lower cost drugs, and may place voluntary limits on drug distribution that deny potential generic competitors access to the samples they need for bioequivalence testing. In addition, the Commission's comment explains how certain FDA regulations may create unnecessary barriers to biosimilar and interchangeable competition, and recommends that the FDA reconsider its naming guidance for biologics and expedite the approval process for interchangeable biosimilars.³⁸

III. International Cooperation

In addition to its domestic programs, the FTC engages in significant international work. On the competition side, with the expansion of global trade and the operation of many companies across national borders, the FTC and DOJ increasingly engage with foreign antitrust agencies to ensure close collaboration on cross-border cases and convergence toward sound competition policies and procedures.

³⁸ Fed. Trade Comm'n, Press Release, *FTC Submits Statement to HHS on Its Blueprint to Lower Drug Prices* (July 17, 2018), <https://www.ftc.gov/news-events/press-releases/2018/07/ftc-submits-statement-hhs-its-blueprint-lower-drug-prices>.

Putting these principles into practice, the FTC effectively coordinates reviews of mergers and cases of potential unilateral anticompetitive conduct under concurrent review with its international counterparts 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 the staff of antitrust agencies in Argentina, Brazil, Canada, Chile, China, Colombia, the European Union, India, Korea, and Mexico to analyze the proposed transaction and potential remedies.³⁹

The U.S. antitrust agencies also facilitate dialogue and promote convergence by taking an active role in bilateral and multilateral channels. For example, in 2018, we held high-level bilateral meetings with counterparts from China's antitrust authorities to promote sound practices and procedures in antitrust investigations. Our discussion topics included procedural fairness, interagency cooperation, and antitrust treatment of the exercise of intellectual property rights. The FTC will support the continued development of such initiatives, and will continue to engage in high-level consultations with other key counterparts, as we did recently with counterparts from Canada, the European Commission, and Mexico.

In addition, the FTC plays a key role in multilateral fora dedicated to facilitating dialogue and convergence toward sound competition policy and enforcement. For example, the FTC led the development, and is now promoting the implementation, of the International Competition Network's (ICN) Guidance on Investigative Process, the most comprehensive agency-led effort to articulate principles and practices of procedural fairness in antitrust investigations. We also are heading a project aimed at further developing the ICN's flagship Recommended Practices for

³⁹ Fed. Trade Comm'n, Press Release, *FTC Requires International Industrial Gas Suppliers Praxair, Inc. and Linde AG to Divest Assets in Nine Industrial Gas Markets as a Condition of Merger* (Oct. 22, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/ftc-requires-international-industrial-gas-suppliers-praxair-inc>.

Merger Notification and Review Procedures, which has resulted in more streamlined review of cross-border transactions.

When appropriate, the FTC works with other U.S. government agencies to ensure that competition-related issues that also implicate broader U.S. policy interests, such as the protection of intellectual property and non-discriminatory treatment of U.S. companies, are addressed in a coordinated and effective manner. For example, the FTC participated in negotiating the relevant chapters of NAFTA and the USMCA, was a member of the U.S. team involved in shaping G20 and G7 outcomes on digital economy issues, and has been part of interagency groups that addressed economic and trade issues with China and Korea.

Last year, the FTC and DOJ issued updated Antitrust Guidelines for International Enforcement and Cooperation to provide transparent guidance to the business community on our international antitrust enforcement and cooperation policies, including on the territorial scope of U.S. antitrust investigations and remedies.⁴⁰

IV. Conclusion

As the members of this Subcommittee well know, competitive markets are the foundation of our economy, and effective antitrust enforcement helps ensure that those markets function properly and benefit both consumers and businesses. Thank you for this opportunity to share highlights of the Commission's recent enforcement, research, and advocacy work to promote competition and protect consumers.

⁴⁰ Press Release, Fed. Trade Comm'n, *Federal Trade Commission and Department of Justice Announce Updated International Antitrust Guidelines* (Jan. 13, 2017), <https://www.ftc.gov/news-events/press-releases/2017/01/federal-trade-commission-department-justice-announce-updated>.