

MEMORANDUM OF UNDERSTANDING Between the Federal Trade Commission of the United States of America and the Competition and Markets Authority of the United Kingdom.

The Federal Trade Commission (FTC) of the United States of America and the Competition and Markets Authority (CMA) of the United Kingdom (each one “a Participant”; collectively “Participants”)

RECOGNIZING that the Participants are charged with the mission of protecting consumers from deceptive and fraudulent commercial practices, and other unlawful conduct that harms consumers, according to the national laws and regulations of their respective countries;

RECOGNIZING that deceptive and fraudulent commercial practices, and other unlawful conduct that harms consumers, undermine the integrity of markets and consumer confidence in those markets to the detriment of all businesses and consumers;

RECOGNIZING that the enforcement challenges that exist go beyond national frontiers, and that cooperation among national public authorities responsible for the enforcement of consumer protection laws is essential to fight such practices;

RECOGNIZING that there is a need for effective and enhanced cross-border collaboration amongst the Participants, as well as with civil and criminal enforcement authorities in their respective countries, for enforcement cooperation, reciprocal exchange of information, and sharing of expertise in consumer protection matters;

RECOGNIZING that the Participants will from time to time enlist the assistance of, or seek to assist, those other civil and criminal enforcement authorities when acting under this Memorandum;

RECOGNIZING that the Participants may from time to time enlist the assistance of non-enforcement entities that have consumer-protection related functions, such as providing advice to consumers or adjudicating consumer complaints;

RECOGNIZING the OECD’s recommendations on enhanced enforcement cooperation in the *2016 Council Recommendation on Consumer Protection in E-commerce*, and the *2003 Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders*, which call on governments to improve consumer protection enforcement authorities’ ability to cooperate and coordinate their investigations and enforcement activities through notification, information sharing (subject to appropriate safeguards for confidential business information or personal data), investigative assistance, and joint actions;

RECOGNIZING the efforts that the Participants have already made to strengthen bilateral ties, including their joint enforcement-related work in the International Consumer Protection and Enforcement Network, and the joint work of the Participants and other civil and criminal authorities in their respective jurisdictions such as the joint work of the FTC and U.K. Trading Standards Authorities in the International Mass Marketing Fraud Working Group;

RECOGNIZING that the Memorandum of Understanding Between the United States Federal Trade Commission and the Information Commissioner’s Office of the United Kingdom on the Enforcement of Laws Protecting Personal Information in the Private Sector has facilitated and enhanced enforcement cooperation between those agencies;

RECOGNIZING that the U.S. Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.*, as amended by the U.S. SAFE WEB Act, authorizes the FTC to disclose information to law enforcement authorities from other countries under appropriate circumstances, and that the Enterprise Act 2002, Part 9, authorizes the CMA and other enforcers to disclose information to enforcement authorities in other countries under appropriate circumstances;

RECOGNIZING that such information sharing and enforcement cooperation are essential elements to ensure compliance with consumer protection laws, serving a substantial public interest, while also noting that the laws applicable to the Participants may contain certain restrictions on international law enforcement assistance, including information disclosure, and that nothing in this Memorandum of Understanding is intended to affect such restrictions;

RECOGNIZING that information sharing that involves personal data requires the FTC and the CMA to ensure that they protect the privacy and security of such data in any cross-border information sharing and enforcement cooperation arrangements under this Memorandum of Understanding; and

RECOGNIZING that action against cross-border deceptive and fraudulent commercial practices, and against other unlawful conduct that harms consumers, can be made more effective by increased consumer protection enforcement cooperation;

HAVE REACHED THE FOLLOWING UNDERSTANDING:

PART ONE: BACKGROUND

I. Definitions

For the purposes of this Memorandum of Understanding (“Memorandum”),

A. “Applicable Consumer Protection Laws” means:

1. For the United States, those laws and regulations administered by the Federal Trade Commission, other than Federal antitrust laws (as defined in 15 U.S.C. § 6211(5) of the United States Code), as may be modified or enacted from time to time; and

2. For the United Kingdom, those laws listed as infringements for the purposes of Part 8 of the Enterprise Act 2002.

B. “Covered Violation” means a practice that would violate the Applicable Consumer Protection Laws of either the United States of America or the United Kingdom and that involves unlawful conduct that harms consumers, including fraudulent or deceptive commercial practices or practices that are otherwise the same or substantially similar to practices prohibited by any provision of the Applicable Consumer Protection Laws administered by the other Participant.

C. “Information” means evidence, testimony, communications, statements, documents or copies thereof, data, metadata, recordings, images in any form, and all data compilations that serve to identify, locate or link any such materials such as file inventories, folders and lists, or other things,

that are obtained in anticipation of or during the course of an investigation or enforcement proceeding, including the identity of a person under investigation and any personal data necessary or useful for such an investigation or proceeding;

D. "Person" means any natural person or legal entity, including corporations, unincorporated associations, partnerships, and bodies corporate existing under or authorized by the laws of the United States, its States, or its Territories, or the laws of the United Kingdom.

E. "Enforcer" means public civil or criminal enforcement authorities from the Participants' respective countries that are vested with law enforcement or investigative authority in civil, criminal, or administrative matters.

F. "Non-Enforcer" means an entity that is not an enforcer, but has consumer protection-related functions, such as providing advice to consumers or adjudicating consumer complaints.

G. "Request" means a request for assistance under this Memorandum.

H. "Requested Participant" means the Participant from which assistance is sought under this Memorandum, or which has provided such assistance, whether itself or by enlisting the assistance of another Enforcer.

I. "Requesting Participant" means the Participant seeking or receiving assistance under this Memorandum, or which has received such assistance, whether on its own account or acting to assist another Enforcer.

II. Objectives and Scope of Assistance

A. This Memorandum sets forth the Participants' intent with regard to cooperation, mutual assistance and the exchange of Information for the purpose of enforcing and securing compliance with Applicable Consumer Protection Laws. The Participants do not intend any provision of this Memorandum to:

1. create or affect any legally binding rights or obligations under international or domestic laws;

2. affect any Participant's ability to seek information on a lawful basis from a Person located in the other Participant's country, or preclude any Person from voluntarily providing legally obtained information to a Participant.

B. The Participants understand that it is in their common interest to:

1. cooperate with respect to the enforcement of the Applicable Consumer Protection Laws, including sharing complaints and other relevant information and providing investigative assistance;

2. facilitate research and education related to consumer protection;

3. promote technical exchanges relating to each Participant's best practices for enforcement activities, including developments in technology, intelligence sources, and redress distribution models;

4. inform each other of developments in their respective countries that relate to this Memorandum;

5. participate in periodic teleconferences to discuss ongoing and future opportunities for cooperation; and

6. work together on strategic consumer priorities accordingly. This might include discussing mutual interests in the pipeline for consumer enforcement cases or exploring international dimensions to market studies of mutual interest.

PART TWO: ENFORCEMENT COOPERATION

III. Information Sharing and Requests for Assistance

A. Subject to Sections IV and VI, the Participants intend, in appropriate cases, to use best efforts to:

1. share Information, including complaints and other personally identifiable information, that a Participant believes would be relevant to investigations or enforcement proceedings regarding Covered Violations;

2. provide investigative assistance upon request to each other, including:
 - i. obtaining Information pursuant to the Requested Participant's legal authority;
 - ii. obtaining testimony or statements of Persons or otherwise obtaining Information from Persons;
 - iii. locating or identifying Persons, assets, or things; and
 - iv. using best efforts to assist in execution of service of process;
 3. coordinate enforcement against cross-border Covered Violations that are a priority for both Participants;
 4. co-operate in the detection and investigation of violations of the Participants' Applicable Consumer Protection Laws;
 5. provide other appropriate assistance that would aid in the enforcement against Covered Violations; and
 6. establish the routinized, electronic sharing of appropriate consumer complaint information between the Participants and with other Enforcers, as well as Non-Enforcers including the U.K.'s Citizens Advice to the extent appropriate. For Enforcers, this includes joining and/or maintaining membership in econsumer.gov, and use of the Consumer Sentinel Network for complaint sharing.
- B. Subject to Section IV, and to facilitate the cooperation described in Section III.A, each Participant intends to designate a primary contact for the purposes of Requests and other communications under this Memorandum. The initial contacts are identified in Annex 1.
- C. Subject to Section IV, and to facilitate the cooperation described in Section III.A, the Participants intend to develop a system to facilitate and track the confidential and secure exchange of information relating to ongoing or anticipated investigations or enforcement matters, building on existing systems to the extent feasible.
- D. The Participants understand that:

1. the Requesting Participant is expected to provide sufficient information to enable the Requested Participant to determine whether a Request relates to a Covered Violation and to take action in appropriate circumstances. Such information may include a description of the facts underlying the Request and the type of assistance sought, as well as an indication of any special precautions that should be taken in the course of fulfilling the Request, as described in Annex 2;

2. prior to requesting assistance, the Requesting Participant should perform a preliminary inquiry to ensure that the Request is consistent with the scope of this Memorandum and does not impose an excessive burden on the Requested Participant.

E. Subject to Sections IV, VI, and IX:

1. To facilitate cooperation within the United States, the FTC intends to liaise with other Enforcers upon the request of the CMA and, to facilitate cooperation within the U.K., the CMA intends to liaise with other Enforcers upon the request of the FTC; and

2. The Participants may also liaise with Non-Enforcers in their respective jurisdictions, consistent with their respective laws and subject to appropriate confidentiality and data safeguards, to achieve the objectives of this Memorandum.

IV. Prioritization Framework, Limitations on Assistance, and Resolution of Disagreements

A. The Participants recognize that it is not feasible for Participants to offer assistance for every Covered Violation. Accordingly, the Participants intend to seek and provide cooperation focusing on those Covered Violations most serious in nature, such as those involving egregious conduct, those that cause or are likely to cause substantial economic harm, or those that otherwise affect a significant number of consumers.

B. The Participants further recognize that the Requested Participant may exercise its discretion to decline the Request, or limit or condition its cooperation, including where it is outside the scope of this Memorandum and the prioritization framework, above, or more generally, where it would be inconsistent with domestic laws, important interests, or priorities. If asked, the Requested Participant is to provide a preliminary response within 30 days as to whether it intends to fulfil the Request, decline the Request, or limit or condition its cooperation with the Request. If the Requested Participant intends to fulfil the Request, its response may include a non-binding time estimate.

C. Before denying a Request, the Requested Participant should consult with the Requesting Participant to determine whether assistance may be given in part, subject to specified terms and

conditions. If a Request is denied, the Requested Participant should provide the Requesting Participant with a written explanation of the basis for refusal.

D. Participants intend to resolve any disagreements related to cooperation that may arise under this Memorandum through consultations, and, failing resolution in a reasonable and timely manner, by discussion between appropriate senior officials designated by the Participants.

E. The Participants intend to establish a Joint Implementation Committee, made up of not more than three representatives from each Participant, that will meet at least twice a year, either in person or by telephone or videoconference, in order to:

1. discuss pending Requests made by the Participants;
2. assess the progress of ongoing investigations and procedures regarding Requests made pursuant to this Memorandum and other matters related thereto;
3. assess which Requests concern acts and practices that meet the prioritization framework set forth in Section IV.A, and which Requests are the highest priorities to pursue;
4. review econsumer.gov complaint data and other complaint data sources, such as complaint data compiled by Citizens Advice and the FTC's Consumer Sentinel Network, to identify areas of mutual enforcement interest for coordinated enforcement work; and
5. when appropriate, to consider the need for improvements to this Memorandum and to make suitable proposals for modification.

V. Costs

Unless otherwise decided by the Participants, each Requested Participant intends to bear its own costs incurred in providing information to the Requesting Participant.

PART THREE: CONFIDENTIALITY AND DATA SAFEGUARDS

VI. Confidentiality and Data Safeguards Certification

A. When disclosing Information under this Memorandum, the Participants intend to set out: that the Information is disclosed for official law enforcement purposes; whether there may be any further onward disclosure of the Information to another Person or Enforcer and, if so, the

procedures for doing so; and whether the Information may be used for any other purpose. To the fullest extent possible, and consistent with their respective laws, each Participant intends to certify the confidential treatment of Information received under this Memorandum, including the existence of an investigation to which the Information relates. Subject to Section VI.D, the Participants plan to treat the shared Information, the existence of the investigation to which the Information relates, and any Requests made pursuant to this Memorandum as confidential, and do not intend to further disclose or use this Information for purposes other than those for which it was originally shared, which may include assistance from another Enforcer, without the prior written consent of the Requesting Participant. The Participants recognise that from time to time it may be necessary for a Participant to disclose Information to a Non-Enforcer to achieve the purpose for which Information is shared. In such a case, the Information is only to be shared with the Non-Enforcer with the prior consent of the other Participant. Limitations and specific procedures may apply with respect to the sharing of Information with Non-Enforcers, including the U.K. Non-Enforcers listed in Annex 3.

B. Each Participant is to use best efforts, consistent with its laws, to safeguard the security of any Information received under this Memorandum and respect any safeguards decided upon by the Participants involved in the Request. In the event of any unauthorized access or disclosure of the Information, the Participants are to take all reasonable steps to prevent a recurrence of the event and to promptly notify any other affected Participant of the occurrence.

C. The Participants recognize that information exchanged in connection with investigations and enforcement often contains personally identifiable information. If the Requesting Participant wishes to obtain confidential Information that includes personally identifiable information, then the Participants understand that they are to take additional appropriate measures to safely transmit and safeguard the Information containing personally identifiable information. Protective measures include, but are not limited to, the following examples and their reasonable equivalents, which may be used separately or combined as appropriate to particular circumstances:

1. transmitting the Information in an encrypted format;
2. transmitting the Information directly by a courier with package tracking capabilities;
3. maintaining the Information in secure, limited access locations (e.g., password-protected files for electronic information and locked storage for hard-copy information); and
4. if used in a proceeding that may lead to public disclosure, redacting personally identifiable information or filing under seal.

D. When a Requesting Participant is acting to assist another Enforcer, that Enforcer is subject to the confidentiality and data safeguards set forth in this Section, and is expected to sign the certification

set out in Annex 4 before Information is disclosed. A disclosure of the existence of an investigation by the Requesting Participant to another Enforcer to obtain assistance in executing the Request does not require the other Enforcer to sign the statement at Annex 4, provided that the disclosure is in furtherance of the investigation.

VII. Disclosure of Confidential Information

A. Notwithstanding Section VI.A, the Participants understand that:

1. Either Participant may disclose Information provided pursuant to this Memorandum in response to a formal demand from the Participant's country's legislative body or an order issued from a court with proper jurisdiction in an action commenced by the Participant or its government; and

2. Information obtained in connection with the investigation or enforcement of criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of a Participant's country's criminal laws.

B. The Participants should oppose, to the fullest extent possible consistent with their respective laws, any application by a third party for disclosure of confidential information received from a Requested Participant, unless the Requested Participant consents to its release. The Participant that receives such an application is to notify forthwith the Participant that provided it with the confidential information. This is not understood to require a Participant to appeal every decision of a court or tribunal ordering it to disclose information. In such a case, the Participants should consult each other on next steps.

VIII. Retention of Materials

A. For the purposes of this Section VIII, "Materials" means all documents and electronically stored information and tangible things that were shared under this Memorandum and that are in a Requesting Participant's possession, custody, or control.

B. Participants understand they are expected not to retain Materials for longer than is reasonably needed to fulfil the purpose for which the Materials were shared, or any document retention required by the Requesting Participant's country's laws, whichever is longer.

C. The Participants recognize that in order to fulfil the purpose for which the Materials were shared, the Participants typically need to retain the Materials until the conclusion of the pertinent investigation or related proceedings for which the Materials were requested.

D. Consistent with their respective laws, the Participants are expected to return or delete any Materials that are no longer needed, using secure methods, as soon as practicable after the Requested Participant makes a written request for return or deletion or otherwise within a reasonable time once the Materials are no longer required.

E. When a Participant shares Information under this Memorandum with another Enforcer, that Enforcer is expected to give effect to the provisions on retention of Materials set forth in this Section.

IX. Consultation with Other U.K. Entities

A. The Participants recognize that coordination with the government authorities and non-governmental entities listed in Annex 3 may be warranted in connection with investigations of suspected fraudulent and deceptive commercial practices and other unlawful conduct that harms consumers, and that it may be appropriate to make contact with and obtain Information from those other entities listed in Annex 3.

B. To the extent that any of entities listed in Annex 3 exercise control over the sharing of confidential information, the Participants intend in appropriate cases to facilitate cooperation.

C. The Participants intend to coordinate such consultation through the points of contact designated in Annex 1.

PART FOUR: TECHNICAL EXCHANGES

X. Staff and Subject-Matter Expertise Exchanges

A. The Participants intend to collaborate on sharing best practices, subject-matter expertise, and other intelligence as well as on economic and legal conditions and theories relating to the enforcement of the Applicable Consumer Protection Laws. Such collaboration may include the following:

1. staff exchanges;
2. periodic teleconferences or webinars to exchange information between and among the Participants' management and staff on legal developments, enforcement actions, and investigative techniques;
3. coordinated studies on consumer-related market issues when appropriate on issues of mutual concern; and

4. the exchange of other relevant information within the scope of this Memorandum, such as government and self-regulatory enforcement initiatives.

XI. Consumer and Business Education

A. To the extent practicable, the Participants intend to collaborate regarding the development and dissemination of consumer and business education materials, particularly with regard to materials relating to Covered Violations of a cross-border nature. In conducting such collaboration, the Participants may partner with other organizations, including non-governmental organizations and business stakeholders, in their jurisdictions.

B. To the extent practicable, the Participants intend to assist in the dissemination of relevant consumer and business education materials in print or digital form within their jurisdictions, involving other organizations, including non-governmental organizations and business stakeholders, when appropriate.

PART FIVE: DURATION AND EFFECT

XII. Duration of Cooperation

A. The Participants intend cooperation in accordance with this Memorandum to begin as of the date it is signed by all Participants and to continue as provided in this Memorandum.

B. Assistance in accordance with this Memorandum is understood to be available concerning Covered Violations occurring before as well as after this Memorandum is signed.

C. Any Participant may discontinue its participation in this Memorandum at any time, but a Participant is expected to provide 30 days written notice of such discontinuation. Before providing such notice, a Participant is expected to consult with the other Participant.

D. Upon discontinuation of participation by a Participant under this Memorandum, the Participant is expected to maintain the confidentiality of any Information communicated to it by the other Participants in accordance with this Memorandum, and return or destroy, consistent with the provisions of Sections VI and VIII, Information obtained from the other Participant in accordance with this Memorandum.

E. This Memorandum may be modified by mutual decision of the Participants. Any modification should be in writing and signed by all of the Participants.

XIII. Participation of Other Governmental Consumer Protection Enforcement Authorities

Other governmental consumer protection enforcement authorities, including from outside the Participants' jurisdictions, may become Participants in this Memorandum upon the mutual decision of the original Participants.

SIGNATURES

Signed at Washington, D.C., United States of America, and London, England, in duplicate.

FOR THE FEDERAL TRADE COMMISSION OF THE UNITED STATES OF AMERICA:

Joseph J. Simons, Chairman

United States Federal Trade Commission

Date:

FOR THE UNITED KINGDOM COMPETITION AND MARKETS AUTHORITY:

Rt Hon Lord Tyrie, Chairman

United Kingdom Competition and Markets Authority

Date:

ANNEX 1

Designated Initial Primary Contacts

for Requests for Assistance and Other Communications under this Memorandum

For the UK Competition and Markets Authority:

Name: Jason Freeman
Title: Director, Consumer Law
Agency: Competition and Markets Authority
Telephone: 0044 20 3738 6262
E-mail: jason.freeman@cma.gov.uk
Mailing address: Victoria House, 37 Southampton Row, London, WC1B 4AD

For the Federal Trade Commission:

Name: Hugh Stevenson
Title: Deputy Director, Office of International Affairs
Agency: Federal Trade Commission
Telephone: 1.202.326.3511
E-mail: hstevenson@ftc.gov
Mailing Address: 600 Pennsylvania Avenue, NW, Washington DC 20580

ANNEX 2

Model Request Form

The Participants intend to use a Model Request form that includes the following:

- (a) the names of the Requested and the Requesting Participants and, when a Participant is acting to assist another Enforcer, the name of that Enforcer;
- (b) the name, location, and contact details of the subject(s) of the investigation, if available;
- (c) a general description of the alleged Covered Violation including, where applicable, the name of the product or service and the advertising or sales medium involved;
- (d) the estimated number and location of consumers likely to be harmed and the estimated economic harm;
- (e) the Applicable Consumer Protection Laws allegedly violated;
- (f) the description of the assistance requested;
- (g) the purpose for which the Information requested will be used;
- (h) a certification of confidential treatment of all information exchanged between the Participants in connection with the Request consistent with Annex 5 of the Memorandum;
 - (i) a certification, when a Requesting Participant is acting to assist another Enforcer, of that Enforcer's legal basis for maintaining confidentiality of a Request and all Information exchanged in connection with the Request as set forth in Annex 4 of the Memorandum;
- (j) a statement of intention to comply with the provisions on retention of Materials;
- (k) an indication of any special precautions that should be taken in the course of fulfilling the Request;

(l) a description of any investigation and consultations undertaken by the Requesting Participant; and

(m) a description of the Information establishing a Covered Violation including witnesses and documents that the Requesting Participant can provide to the Requested Participant; and

(n) a statement of whether the Requesting Participant intends to share the Information exchanged in connection with this Request with another Person or Enforcer, and, if that is the intention, any limitations or procedures for sharing that Information.

ANNEX 3

The following United Kingdom entities are recognized as having particular interest in contributing to the Memorandum's goal of enhancing cross-border cooperation among consumer protection agencies:

1. Department for Business, Energy and Industrial Strategy

2. Core Members of the UK Consumer Protection Partnership: Advertising Standards Authority, Citizens Advice, Citizens Advice Scotland, Chartered Trading Standards Institute, Competition and Markets Authority, Consumer Council for Northern Ireland, Convention of Scottish Local Authorities/ Trading Standards Scotland, Department of Enterprise, Trade and Investment Northern Ireland, Financial Conduct Authority and National Trading Standards.

ANNEX 4

To be signed by Enforcers that receive assistance under this Memorandum:

CERTIFICATION

I certify on behalf of this agency that:

1. Any Information received pursuant to this request for investigative assistance will be used only for the official law enforcement purposes for which they were shared and will be maintained in confidence.
2. This agency will not disclose such Information further (including to a domestic or foreign law enforcement agency) except in connection with a judicial, administrative, or other legal proceeding commenced by this agency and related to our request. If use in the proceeding would result in public disclosure, this agency will give the original submitter of the information to the Federal Trade Commission/Competition and Markets Authority prior written notice of its intention to use the Information in the proceeding and an opportunity to seek appropriate relief.
3. This agency, to the extent permitted by law, will notify the Federal Trade Commission/Competition and Markets Authority of the results of the investigation or enforcement proceeding pertaining to this request.
4. This agency will not retain documents and electronically stored information and tangible things that were shared under this Memorandum for longer than is reasonably needed for the purpose for which such materials were shared, or any document retention required by law, whichever is longer, and will return or delete any such materials that are no longer needed within a reasonable time after such materials are no longer required.

The legal basis for this agency's authority to maintain the requested Information in confidence is:
(cite applicable provision of the relevant statute or rules and attach copies)

Annex 5

The Participants' authority to maintain requested Information in confidence is as follows:

For the FTC:

The FTC protects the confidentiality of sensitive, nonpublic information received from businesses or consumers located domestically or abroad, or from foreign authorities, under applicable provisions of U.S. law. As a general matter, the FTC typically does not disclose nonpublic agency information. Nonpublic agency information can include information submitted to the agency, information about the Commission's investigations and actions, and information about internal agency deliberations. Unauthorized disclosure of nonpublic information submitted to the Commission is subject to criminal prosecution and punishable by fines or imprisonment under the FTC Act, 15 U.S.C. § 50. Under certain circumstances, unauthorized disclosure of nonpublic agency information is subject to criminal sanction under the Trade Secrets Act, 18 U.S.C. § 1905, the Larceny Act, 18 U.S.C. § 641, and SEC Rule 10b-5. In addition, the disclosure of materials submitted to the Commission is restricted by the following provisions of the FTC Act:

Sections 21(b) and 21(f) of the FTC Act, together with Commission Rule 4.10(d), limit disclosure of information in a law enforcement investigation if the information was submitted pursuant to compulsory process or if it was submitted voluntarily in lieu of such process pursuant to a request and designated confidential.

Section 6(f) of the FTC Act limits disclosure of trade secrets and confidential or privileged commercial or financial information.

Section 21(c) of the FTC Act requires pre-disclosure notice to the submitter where the Commission intends to disclose documents marked "confidential" by a submitter if the Commission or its designee determines that such documents are not in fact confidential.

The FTC Act does, however, permit disclosure of information protected by Sections 6(f), 21(b) and 21(f) to foreign law enforcement authorities in specified circumstances.¹

Other federal laws also require the FTC to treat specific types of information as confidential, without regard to the manner in which the information is obtained. For example, U.S. law imposes confidentiality obligations regarding certain classes of information, including personally identifiable information, maintained by federal agencies. See, e.g., 5 U.S.C. § 552a (Privacy Act of 1974). There are certain, discrete circumstances in which the FTC may disclose a person's confidential information for a specific use. For example, the FTC Act does not bar the agency's use of a person's confidential information in judicial and administrative proceedings. However, the Federal Rules of Civil Procedure

¹ Such disclosure is permitted in the agency's discretion, for example, when the foreign law enforcement authority requests information for the purpose of investigating or engaging in enforcement proceedings related to possible violations of foreign laws prohibiting fraudulent or deceptive practices or other practices substantially similar to practices prohibited by any law administered by the Commission. Among other requirements, the foreign law enforcement agency must certify that it will use such information only for official law enforcement purposes, and set forth a *bona fide* legal basis for its authority to maintain the information in confidence.

and FTC Rules of Practice include procedures to protect confidential information used in judicial proceedings or FTC administrative proceedings. For instance, the person providing information may seek a protective order to prevent confidential information from being made public or from being used outside the court proceeding. See Fed. R. Civ. P. 26(c); 16 C.F.R. § 3.31(d) (requiring Administrative Law Judge in FTC proceeding to issue a specific protective order). In addition, the FTC Act does not prohibit the agency from complying with information requests from Congress. In the event of such a request, however, the agency must notify the submitter of the information, and the agency can request confidential treatment of any information that may be shared.

The FTC is also subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which requires the agency to provide access to certain existing government records to the public. The law recognizes, however, that the disclosure of certain information could be harmful. It therefore recognizes exceptions and excludes some records, or portions of records, from release including certain law enforcement records (e.g., certain investigatory files) including from foreign agencies. In addition, under Section 21(f) of the FTC Act as amended by the U.S. SAFE WEB Act, the FTC may also withhold from disclosure:

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

For the CMA:

The CMA is under statutory obligations under Part 9 of the Enterprise Act 2002 (EA02) to protect confidential information. These obligations apply to the confidentiality of information relating to individuals and businesses that comes to the CMA in connection with the exercise of its statutory functions. Restrictions on the further disclosure of information apply to the CMA and to other persons to whom it makes disclosure. In particular, a person making an unlawful disclosure commits a criminal offence (s.245 of the EA02).

Under the EA02 such specified information may only be disclosed in certain specific circumstances, generally referred to as 'information gateways', and only after detailed consideration of certain additional factors. The EA02 does not permit a disclosure of personal information which contravenes the Data Protection Act 2018 and General Data Protection Regulation 2016 and related legislation. The information gateways currently are consent by the individual or business concerned, an EU obligation, facilitation of a statutory function (whereby information may not be further disclosed by the recipient or used for any other function), use in court proceedings, and to assist an overseas enforcer where appropriate safeguards are in place.²

² The appropriate safeguards are that the matter in respect of which disclosure is made is sufficiently serious, the law of the receiving country provides protection against self-incrimination and protection in relation to the

Whenever information is disclosed by reason of an information gateway, the CMA must, under s.244 of the EA02, carefully consider the need to exclude from disclosure any information whose disclosure is contrary to the public interest; the need to exclude from disclosure information whose disclosure might significantly harm the legitimate business interests of an undertaking, or the interests of an individual; and the extent to which the disclosure is necessary for the purpose (ie the information gateway) for which the authority is permitted to make the disclosure.

Under the Freedom of Information Act 2000 (FOIA), the CMA may be under a duty to confirm or deny that information requested by a member of the public is held and if it is held to communicate that information to the requester. However there are exemptions to these duties:

- S.30 FOIA exempts from disclosure information which relates to confidential sources and was obtained or recorded by the CMA for its statutory purposes of investigating infringements of the law
- S.31 FOIA exempts from disclosure information whose disclosure would prejudice the CMA's or any other public authority's investigative functions
- S.40 FOIA exempts from disclosure personal data which cannot be disclosed under the Data Protection Act 2018 and related legislation
- S.41 FOIA exempts from disclosure information provided to the CMA in confidence, whose disclosure would be a breach of confidence actionable by the person who provided the information
- S.43 FOIA exempts from disclosure information which is a trade secret or whose disclosure would, or would be likely to, prejudice the commercial interests of any person

storage and disclosure of personal information, and whether there are mutual assistance arrangements in place. Information disclosed under this gateway may not be further disclosed or used for any purpose other than that for which it was first disclosed.