

**NOMINATIONS
TO THE FEDERAL TRADE COMMISSION**

HEARING
BEFORE THE
**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS
SECOND SESSION

FEBRUARY 14, 2018

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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NOMINATIONS TO THE FEDERAL TRADE COMMISSION

WEDNESDAY, FEBRUARY 14, 2018

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:35 a.m. in room SH-216, Hart Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Inhofe, Wicker, Blunt, Moran, Lee, Heller, Cruz, Fischer, Moore Capito, Sullivan, Young, Nelson, Cantwell, Klobuchar, Tester, Udall, Blumenthal, Schatz, Baldwin, Markey, Hassan, and Cortez Masto.

OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

The CHAIRMAN. Good morning. Today we welcome four nominees to testify before the Committee as we consider their nominations to serve as Commissioners of the Federal Trade Commission.

Joseph Simons has been nominated to serve as a Commissioner and FTC Chairman. His credentials are impressive. Mr. Simons served as the FTC's chief antitrust enforcer, among other positions at the Commission. Most recently, he served as Partner and Co-Chair of the Antitrust Group at the law firm of Paul, Weiss, Rifkind, Wharton, and Garrison.

Christine Wilson is an antitrust and consumer protection attorney, who most recently served as Vice President for Regulatory and International Affairs at Delta Airlines. Among her other credentials, she too has worked at the Commission before serving as Chief of Staff to the FTC Chairman Tim Muris during the George W. Bush administration.

Noah Joshua Phillips is a familiar face to many of us, as he currently serves as Chief Counsel to Senator John Cornyn, where he advises on issues including antitrust, consumer privacy, and intellectual property.

Finally, Rohit Chopra. While not an attorney steeped in competition law, Mr. Chopra does have extensive experience in government service and as a consumer advocate. He currently serves as a Senior Fellow at the Consumer Federation of America, and previously served in senior roles at both the Consumer Financial Protection Bureau and the U.S. Department of Education.

Thank you all for being here, and welcome to your friends and families who are also joining us.

The FTC is not the largest or most well-known agency under this Committee's jurisdiction, but it is arguably one of the most influential, given its mission to oversee competition and consumer protection across broad swaths of the American economy.

The FTC was founded in 1914 by the direction of Congress, and for more than a century, the Commission has evolved alongside changing market dynamics and consumer preferences.

The agency was borne out of concern at the time that more needed to be done to ensure competitive markets in the United States and to "bust the trusts" that threatened that competition. The Commission's focus soon expanded to include a mandate to enforce against unfair and deceptive acts and practices that threaten consumers.

A common theme bridging the Commission's dual focus on competition and consumer protection is ensuring freedom in the marketplace.

Over its history, and on balance, the FTC has been a strong cop on the beat ensuring that Americans reap the benefits from a functioning economy, not one dominated by firms with unfairly concentrated market power. The FTC has also made it possible for Americans to be confident in their transactions, to spend freely, and grow the economy with the knowledge that they are largely protected from the fraudsters and cheats who would do them harm.

But the agency has not been without controversy. In the late 1970s, for example, the agency drew criticism for its consideration of a regulation that would have imposed major restrictions on television advertisements aimed at young children in order to reduce the amount of sugar that children eat. This regulatory overreach led the Congress to advance heightened procedural safeguards on the Commission's authority to promulgate rules, and led one media outlet to criticize the Commission as the "great national nanny."

The Commission's assertiveness and the breadth of its jurisdiction have earned the FTC other nicknames as well. More recently, the agency has been called the "Federal Technology Commission." That nickname is actually an appropriate one given the Commission's increased focus on the American tech sector and the growing influence of Silicon Valley on the American economy. It is my expectation that the FTC will continue its vigilance on this beat.

Privacy and data security, for example, will remain major consumer protection concerns in the coming years, and issues each of these nominees will contend with, once confirmed. The FTC must continue to bring deception cases where it finds material misrepresentations. And it must bring unfairness cases where it finds substantial harm.

Once again, I want to thank all of you for testifying today and for your willingness to fill these critical posts.

And I will turn now to our Ranking Member, Senator Nelson, for his opening remarks.

**STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman. Senator Blumenthal has kindly agreed to step in as Ranking today since I have to be in three places at once.

Although the Federal Trade Commission is a small agency, it's one with a big responsibility: protecting American consumers. Whether it involves small-time robocallers, multi-million-dollar payday lenders, or giant Silicon Valley tech companies, the FTC acts as a cop on the beat that polices a whole host of unscrupulous practices that put American pocketbooks at risk.

It's not just financial harm, public health can also be at stake. In the past, the FTC has cracked down on cigarette advertisements aimed at kids or on phony sports equipment claiming to prevent concussions.

Just recently the FTC and the FDA sent warning letters to 11 companies who were touting "opioid cessation products." Given the depth of the opioid crisis in our country, it's unconscionable that anyone would prey on vulnerable families in desperate need of help, but they do.

While the recent action by the FTC is a positive step, it also raises serious questions about why the agency waited so long to address this epidemic opioid crisis. Where was the FTC all these years when drug manufacturers were making deceptive marketing claims about the risks associated with OxyContin and other opioids?

Given this reality, it's absolutely essential that the agency fulfills its mission to protect American consumers in a no-nonsense, non-partisan, and independent manner. Unlike other independent agencies, it has a long tradition of acting on a consensus basis. The FTC's mission is too important for individual Commissioners to let politics or special interests impede the agency's law enforcement work. And if confirmed, I expect the nominees, and I have met with them privately, to continue the tradition of past Commissioners and work in a constructive bipartisan and independent manner.

Finally, let me say a word about net neutrality. Simply put, the FTC is not the agency for net neutrality. Despite the amazing things the FTC does, it does not have the expertise, the resources, or the authority to adopt forward-looking rules to protect broadband consumers. The expertise is in the FCC, and that's why you'll see a CRA coming to the Senate to restore the FCC's critical net neutrality protections. That CRA, though, is not inconsistent with my continuing belief that in the long term, as I have discussed over and over while Senator Thune and I have consulted and collaborated on this, only lasting bipartisan net neutrality legislation with real protections can bring the certainty necessary to fully protect consumers and preserve the FCC's authority.

And I thank you, Mr. Chairman.

[The prepared statement of Senator Nelson follows:]

PREPARED STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Thank you, Mr. Chairman. I want to thank the nominees before us today. We now live in a cynical time when public service is not as valued as it once was. I commend all of you for your willingness to overcome this unfortunate attitude and work on behalf of the American public.

The Federal Trade Commission is America's premier consumer protection agency. In 1914, President Wilson signed the FTC Act into law, empowering the newly formed commission to crack down on unfair methods of competition.

And since the law was amended in 1938 to prohibit "unfair or deceptive acts and practices," the FTC Act remains the bedrock of American consumer protection law today.

The FTC is a small agency that has to cover a vast amount of real estate. The pocketbooks of American consumers are under constant assault by scams and unscrupulous corporate practices. From small-time robocallers to multi-million-dollar payday lenders to the giant tech companies of Silicon Valley, the FTC must take on a whole host of commercial practices that put average working Americans at risk.

And it's not just financial harm—public health can be at stake. In the past, the FTC has cracked down on cigarette advertisements aimed at kids and on phony sports equipment claiming to prevent concussions. Just recently, the FTC and the FDA sent warning letters to 11 companies who were touting opioid cessation products. Given the depth of the opioid crisis in our nation, it's unconscionable that anyone would prey on vulnerable families in desperate need of help.

Given this reality, it is absolutely essential that the FTC fulfills its mission to protect American consumers in a no-nonsense, bipartisan manner.

Unlike other independent agencies, the FTC has a long tradition of acting on a consensus basis. The FTC's mission is too important for individual commissioners to bring their ideological baggage into the agency's law enforcement work. If confirmed, I expect all of you to continue the tradition of past FTC commissioners and work in a constructive, bipartisan manner.

And finally, let me say a word about net neutrality. Simply put, the FTC is not the agency for net neutrality. Despite the amazing things the FTC does, it does not have the expertise, the resources or the authority to adopt forward looking rules to protect broadband consumers. That's why I support the CRA to restore the FCC's critical net neutrality protections. That CRA, though, is not inconsistent with my continuing belief that, in the long-term, only lasting bipartisan net neutrality legislation with real protections can bring the certainty necessary to fully protect consumers and preserve the FCC's authority.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson. And I would say, "Hear, hear!" to that last statement, and hopefully this Committee will be able to get there in due time.

We have a couple of our colleagues we would like to welcome to the Commerce Committee today. And they are here to introduce a couple of our nominees. I first want to recognize the President Pro Tem of the U.S. Senate, Senator Hatch. And he is here to introduce Joseph Simons.

Senator Hatch, you're recognized.

**STATEMENT OF HON. ORRIN HATCH,
U.S. SENATOR FROM UTAH**

Senator HATCH. Well, thank you so much, Mr. Chairman and members of the Committee. I want to thank you for the opportunity to appear.

It is my distinct pleasure to introduce Joe Simons as nominee for Chairman of the Federal Trade Commission. We've all been eagerly waiting for this hearing because we all know it's high time to get things up and running again at the FTC. Though now over 100 years old, its mission remains as critical today as it was when first established.

The United States is the economic marvel of the world. Our market system, in which entrepreneurs are free to build and consumers are free to choose, has proven an engine of prosperity without equal.

But as I need not remind members of this Committee, a free enterprise economy will reach its full potential only so long as institutions like the FTC keep our markets free, fair, and competitive. Striking that balance has always been exceedingly difficult, no less now than in the past. And so, for all the prosperity of our system, and all the prosperity our system has delivered, for all it promises

to deliver still, today there's a palpable anxiety about our economy and its trajectory.

Concerns are being raised about corporate consolidation and the conduct of some of our biggest firms. Questions of data privacy and security loom large. Thus, the next few years will prove a critical time in the history of the FTC. The concerns are real, the policy choices are difficult, and the pressures brought to bear are likely to be heavy.

Ultimately, Chairman Thune, that is why I am so pleased to be here to make this introduction. Let me say this and let me be clear: Joe Simons is just the man this moment requires. The President could not have made a better choice for this crucial role.

I have to say, of course, he is superbly qualified to lead the Commission as Chairman. He was educated at Cornell and Georgetown Law. He served in several important posts at the FTC, including Director of the Bureau of Competition, and was both a partner and leader of the antitrust group at the law firm Paul Weiss.

But more importantly than his résumé, Joe Simons is also uniquely suited, both by temperament and character, to take up this charge. In his tenure at the FTC, on both merger and conduct cases, he earned a reputation for skill, integrity, and vigor. His enforcement decisions both when to proceed and, just as importantly, when not to, reflected doctrinal expertise, a keen sense for economics, and a practical feel for the operation of markets. Indeed, the methods he developed have been adopted and used by administrations of both parties and judges of all philosophical approaches.

Once in private practice, he was called upon by both private clients and public institutions to handle the most difficult problems and most important and sensitive of matters. As the FTC charts its course through the modern era, Joe Simons' experience and stature will make him just the steady hand that the markets, the bar, and consumers expect.

Of course, the FTC is more than just its Chairman. Before this Committee is an excellent slate. Christine Wilson is a recognized leader in competition law, and I have great respect for her. Rohit Chopra is a widely regarded expert in consumer protection. And Noah Phillips, of course, is a part of our family here in the Senate. Consistently over the years, he has proven a reliable counselor to Senator Cornyn as well as an honest and productive broker in working with other Senate offices. I know he'll make an exceptional Commissioner.

In conclusion, Mr. Chairman, I commend the President on such outstanding nominees, and I applaud this Committee for its expedition in moving them forward. Let there be no mistake: this is an excellent package, and it deserves bipartisan support. Led by Joe Simons, we can trust the FTC will faithfully fulfill its mandate and continue its tradition and bipartisan, practical enforcement and policymaking to tackle the challenges ahead.

Thank you, Mr. Chairman, for this opportunity of saying these few words.

[The prepared statement of Senator Hatch follows:]

INTRODUCTION OF JOE SIMONS BY HON. ORRIN HATCH

Chairman Thune, Ranking Member Nelson, and members of the Committee, I want to thank you for the opportunity to appear here today. It is my distinct pleasure to introduce Joe Simons as nominee for Chairman of the Federal Trade Commission.

We have all been waiting eagerly for this hearing, because we all know it's high-time to get things up and running again at the FTC. Though now over 100 years old, its mission remains as critical today as it was when first established. The United States is the economic marvel of the world. Our market system—in which entrepreneurs are free to build and consumers are free to choose—has proven an engine of prosperity without equal.

But, as I need not remind members of this Committee, a free enterprise economy will reach its full potential only so long as institutions like the FTC keep our markets free, fair, and competitive. Striking that balance has always been exceedingly difficult, no less now than in the past. And so, for all the prosperity our system has delivered, for all it promises to deliver still, today there's a palpable anxiety about our economy and its trajectory. Concerns are being raised about corporate consolidation and the conduct of some of our biggest firms. Questions of data privacy and security loom large. And thus, the next few years will prove a critical time in the history of the FTC. The concerns are real, the policy choices are difficult, and the pressures brought to bear are likely to be heavy.

Ultimately, Chairman Thune, that is why I am so pleased to be here to make this introduction. Let me say this, and let me be clear: Joe Simons is just the man this moment requires. The President could not have made a better choice for this crucial role.

Of course, he is superbly qualified to lead the Commission as Chairman. He was educated at Cornell and Georgetown Law. He served in several important posts at the FTC, including Director of the Bureau of Competition, and was both a partner and leader of the antitrust group at the law firm Paul Weiss. But, more importantly than resume, Joe Simons is also uniquely suited, both by temperament and character, to take up this charge. In his tenure at the FTC, on both merger and conduct cases, he earned a reputation for skill, integrity, and vigor. His enforcement decisions—both when to proceed, and just as importantly, when not to—reflected doctrinal expertise, a keen sense for economics and a practical feel for the operation of markets. Indeed, the methods he developed have been adopted and used by administrations of both parties and judges of all philosophical approaches. Once in private practice, he was called upon—by both private clients and public institutions—to shepherd and handle the most important, and sensitive, of matters. As the FTC charts its course through the modern era, Joe Simons' experience and stature will make him just the steady hand that the markets, the bar, and consumers expect.

Of course, the FTC is more than just its Chairman. Before this Committee is an excellent slate. Christine Wilson is a recognized leader in competition law. Rohit Chopra is a widely regarded expert in consumer protection. And Noah Phillips, of course, is a part of our family here in the Senate. Consistently over the years, he has proven a reliable counselor to Senator Cornyn as well as an honest and productive broker in working with other Senate offices. I know he'll make an exceptional Commissioner.

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The CHAIRMAN. Thank you, Chairman Hatch, my Chairman of the Senate Finance Committee, along with Senator Cornyn and a few others on this panel as well.

But we're also joined by another distinguished Member of the Senate leadership, our Whip, Senator Cornyn, from Texas. And he is here to introduce Noah Phillips.

Senator Cornyn.

**STATEMENT OF HON. JOHN CORNYN,
U.S. SENATOR FROM TEXAS**

Senator CORNYN. Thank you, Mr. Chairman. And thanks to Ranking Member Blumenthal, and the members of the Committee.

I'm honored to be here, as you've heard, to introduce an extremely well-qualified candidate, Noah Phillips, to be a Federal Trade Commissioner.

You've already said, Mr. Chairman, and others have acknowledged, that Noah serves as my Chief Counsel, which is to his great credit. Heaven knows I need all the help I can get. And Noah has helped guide me and my legislative portfolio through complex issues on the Judiciary Committee during his tenure. His intellect shines most when he's faced with technical topics that would intimidate even the most seasoned lawyers: intellectual property, privacy issues, antitrust, and constitutional law. But he's also shown, as Senator Hatch has noted, a knack for building consensus with folks on the other side of the aisle when necessary to get things done. This is becoming increasingly rare these days, and it's one of the reasons he has been a very valued member of my staff.

Trading judicial confirmation hearings for hearings on proposed corporate mergers may seem like a big career change, but Noah actually started out in the financial world in New York City after graduating from college. After completing law school at Stanford, Noah clerked on the U.S. Court of Appeals for the Fifth Circuit and was located in San Antonio and came to the realization that so many folks have when they spend time in my state, he learned to really like Texas. We see a lot of that.

I'll spare you the impressive list of law firms he's worked for, but he soon found his way back to Texas and onto my staff. His legal résumé is remarkable, as is the work he's done with the Judiciary Committee. He has worked behind the scenes on important victims' rights laws such as the Holocaust Expropriated Art Restoration Act and legislation to reform our Nation's patent system.

Beyond the hearing room, Noah is a man of strong moral character and quick wit. As further confirmation of his bipartisan credentials, his wife, Sarah, worked for USAID and the National Security Council during the Obama administration. He is a devoted father to three wonderful children: Dalia, Jonah, and Abigail—who you've already heard some from this morning.

[Laughter.]

Senator CORNYN. And perhaps you'll hear more from as the hearing continues.

As a Commissioner, Noah will use his even-handed manner and experience in patent and antitrust law to better protect consumers and competition. Capitol Hill staff may come and go, but this is a loss that will be felt by my office and by the entire Senate Judiciary Committee. I know that the Commission and our country will be better off during his tenure, and I thank you for your consideration of this deserving and well-qualified nominee.

Thank you, Mr. Chairman.

[The prepared statement of Senator Cornyn follows:]

INTRODUCTION OF NOAH PHILLIPS BY HON. JOHN CORNYN

Thank you, Mr. Chairman, and thanks to Ranking Member Blumenthal and the Members of the Committee. I'm honored to be here, as you've heard, to introduce an extremely well-qualified candidate, Noah Phillips, to be Federal Trade Commissioner.

You've already said, Mr. Chairman, and others have acknowledged that Noah served as my chief counsel, which is to his great credit. Heaven knows I need all the help I can get. Noah's helped guide me and my legislative portfolio through complex issues on the Judiciary Committee during his tenure. His intellect shines most when he's faced with technical topics that would intimidate even the most seasoned lawyers: intellectual property, privacy issues, antitrust, and constitutional law. But he's also showed, as Sen. Hatch has noted, a knack for building consensus with folks on the other side of the aisle when necessary to get things done. This is becoming increasingly rare these days, and it's one of the reasons he's been a very valued member of my staff.

Trading judicial confirmation hearings for proposed corporate mergers may seem like a big career change, but Noah actually started out in the financial world in New York City after graduating from college. After completing law school at Stanford, Noah clerked on the U.S. Court of Appeals for the 5th Circuit, and was located in San Antonio, and came to the realization that so many folks have when they spend time in my state: he learned to really like Texas. We see a lot of that.

I'll spare you the impressive list of law firms he's worked for, but he soon found his way back to Texas and on to my staff. His legal resume is remarkable, as is the work he's done with the Judiciary Committee, working behind the scenes on important victims' rights laws like the Holocaust Expropriated Art Restoration Act and legislation to reform our Nation's patent system.

Beyond the hearing room, Noah's a man of strong moral character and quick wit. As further confirmation of his bipartisan credentials, his wife Sarah worked for USAID and the National Security Council during the Obama Administration. He is a devoted father to three wonderful children: Dalia, Jonah, and Abigail, whom you've already heard some from this morning and perhaps you'll hear more from as the hearing continues.

As a Commissioner, Noah will use his even-handed manner and experience in patent and antitrust law to better protect consumers and competition. Capitol Hill staff may come and go, but this is a loss that will be felt by my office and by the entire Senate Judiciary Committee. I know that the Commission and our country will be better off during his tenure, and I thank you for your consideration of this deserving and well-qualified nominee.

The CHAIRMAN. Thank you, Senator Cornyn.

And we are grateful for our colleagues' willingness to come here and testify on behalf of the nominees. Thank you for being here.

And I'm going to ask our nominees if they would come forward. I'm going to recognize a member of this Committee in just a minute, Senator Capito, to introduce one of the other "noms" as well, but if we could have our folks come forward, we'll get rolling.

I want to recognize Senator Capito, and she is here to introduce Ms. Christine Wilson.

**STATEMENT OF HON. SHELLEY MOORE CAPITO,
U.S. SENATOR FROM WEST VIRGINIA**

Senator CAPITO. Yes. Thank you, Mr. Chairman.

I want to thank all the nominees, but I particularly want to thank President Trump for nominating Christine Wilson as a nominee as FTC Commissioner to the Committee. She's an absolute stellar candidate.

Ms. Wilson works in Washington, D.C., and lives in Falls Church, Virginia. But she has recently purchased farmland in Morgan County, West Virginia. Christine and her husband both have relatives who have lived and worked in the region in the 1700s and the 1800s. So when they break ground on their house in March, it

will be something of a homecoming for them, and West Virginians will welcome them home.

Aside from being one of my newest constituents, I would like to highlight her work with women and human trafficking. Included in the plans of Ms. Wilson's recently purchased farmland in West Virginia, is her hope to open a retreat location for victims of sexual trafficking and abuse. I commend her for this initiative and look forward to hoping that that comes true because that's an issue that many of us care deeply about.

On the professional front, as you can tell from her bio, for over 20 years, she has been an advocate of a simple but vital truth at the heart of American economic greatness: Competition is the best protection for consumers and the strongest prescription for a healthy economy.

Belief that consumers benefit most from robust competition was at the heart of Christine's work as Chief of Staff to the FTC Chairman, Tim Muris, under President George W. Bush. And confidence that market economies increase consumer choice and reduce prices has grounded her many contributions to the sound development of competition law and policy, both domestically and internationally.

If confirmed, I know Christine will bring to bear, as an FTC Commissioner, the extensive experience that she has gained both in private practice and in the public sector. So I look forward to hearing from her and the other nominees today.

And thank you, Christine, for your commitment to our country and your public service.

Thank you.

[The prepared statement of Senator Capito follows:]

INTRODUCTION OF CHRISTINE WILSON BY HON. SHELLEY MOORE CAPITO

It is my pleasure to introduce Christine Wilson, nominee for FTC Commissioner, to this Committee.

Ms. Wilson works in Washington DC and lives in Falls Church, Virginia but recently purchased farm land in Morgan County, West Virginia. Christine and her husband both have relatives who lived and worked in that region during the 1700s and 1800s. When they break ground to build a house in March, it will be something of a homecoming for them.

Aside from being one of my newest constituents, I'd like to highlight her work with women and human trafficking. Included in the plans of Ms. Wilson's recently purchased farm land in West Virginia, is her hope to open a retreat location for survivors of trafficking and abuse. I commend her for this initiative as the issue is one I care very deeply about.

On the professional front, for over twenty years, Ms. Wilson has been an advocate of a simple but vital truth at the heart of American economic greatness. Competition is the best protection for consumers and the strongest prescription for a healthy economy.

Belief that consumers benefit most from robust competition was at the heart of Christine's work as Chief of Staff to FTC Chairman Tim Muris under President George W. Bush.

And confidence that market economies increase consumer choice and reduce prices has grounded her many contributions to the sound development of competition law and policy, both domestically and internationally.

If confirmed, Christine will bring to bear as an FTC Commissioner the extensive experience she has gained both in private practice and the public sector.

I look forward to hearing from her and the other nominees today.

The CHAIRMAN. Thank you, Senator Capito.

So we're going to proceed. We'll start on my left, and your right, with Mr. Simons. And if we could ask our panelists, if they could,

to confine their oral remarks as close to 5 minutes as possible. Your entire statements will be included and made a part of the record. And we'll get on to our questioning.

So, Mr. Simons, please proceed.

**STATEMENT OF JOSEPH SIMONS,
NOMINEE FOR COMMISSIONER/CHAIRMAN DESIGNATE,
FEDERAL TRADE COMMISSION**

Mr. SIMONS. Chairman Thune, Ranking Member Blumenthal, and distinguished members of the Committee, thank you for this opportunity to testify today. And thank you to Senator Hatch for those very kind words. I'll do my best to live up to them.

It is truly an honor to appear before you, and especially regarding this particular nomination. The Federal Trade Commission is an institution that is very close to my heart. The FTC has a great mission. It deals with fascinating and important issues, and most importantly, it has a terrific staff.

As I mentioned to a few of you, in some ways, it feels like I have spent my entire professional life preparing for this opportunity.

As a much younger lawyer back in the 1980s, I worked at the agency as an assistant to the Director of the Bureau of Competition. A little over a decade later, I returned to run the Bureau of Competition at the FTC. And while in private practice, I have for many years represented clients before the FTC and the Antitrust Division of the Department of Justice. Throughout all that time, I never gave much thought to the possibility that I might one day find myself before this Committee as a nominee to lead the Commission, but personally, I cannot imagine a greater professional honor.

Of course, none of this would have been possible without the support of friends and family. First and foremost, I definitely would not be here today without the love and support of my wife, Martha. Also here with me today are my children Jack, Sam, and his wife, Whitney; my stepchildren Jaxson, Michelle, Lauren; my brother-in-law, Jim, and his wife, Lynn; and several of our close friends; and my cousin, Jeff. My daughter, Lauren, is watching from Cornell. And I can't thank all of them enough for their support.

The Federal Trade Commission is a proud and respected institution in Washington. Since its creation a little over 100 years ago, its work has proven critical to increasing the growth of our economy. By vigorously policing anticompetitive conduct and preventing anticompetitive consolidation, the Commission can help ensure that firms compete on the merits, providing better products and services to consumers at lower prices. Likewise, by stamping out unfair and deceptive trade practices, the Commission can help assure that consumers are protected and have the information they need to make intelligent choices in the marketplace. In sum, the FTC is all about protecting and improving consumer welfare. And as has already been discussed, one of the great things about the FTC's mission historically is that it has been performed in a highly bipartisan way.

I pledge to you today that if honored with confirmation, I will continue to lead the FTC in that rich tradition of bipartisan policymaking and enforcement. I look forward to working alongside my

fellow Commissioners, of both parties, to assure that the FTC remains as effective in the start of its second century as it did up through the end of its first.

Thank you again for this opportunity to testify. And I look forward to your questions.

[The prepared statement and biographical information of Mr. Simons follow:]

PREPARED STATEMENT OF JOSEPH SIMONS, NOMINEE TO BE A COMMISSIONER,
FEDERAL TRADE COMMISSION

Chairman Thune, Ranking Member Nelson, and distinguished members of the Commerce Committee, thank you for the opportunity to testify today. It is, truly, an honor to appear before you, and especially regarding this nomination.

The Federal Trade Commission is an institution very close to my heart. The Commission has a great mission, it deals with fascinating and important issues, and it has a terrific staff. I've spent the greater part of my career working on the issues at the core of its mission, witnessing first-hand the tremendous impact the Commission can have and the enormous good that it can do. As I've mentioned to a few of you, in some ways it feels like I've spent my entire professional life preparing for this opportunity. As a much younger lawyer back in the 1980s, I worked at the agency as an assistant to the Director of the Bureau of Competition, among other jobs in Bureau. A little over a decade later, I returned to the FTC to run the Bureau of Competition. And while in private practice, I have for many years represented clients before the FTC and Department of Justice Antitrust Division. Throughout all that time, I never gave much thought to the possibility that I might one day find myself before this Committee as a nominee to lead the Commission. But personally, I cannot imagine a greater professional honor.

Of course, none of this would have been possible without the support of family and friends, some of whom are here with me today. First and foremost, I definitely would not be here today without the love and support of my lovely wife Martha. Also here with me today are my children Sam, Jack and Lauren, and my step-children Jaxson, Michelle, and Lauren. Several of our close friends are here as well. I can't thank them all enough for their support.

The Federal Trade Commission is a proud and respected institution in Washington. Since its creation a little over a 100 years ago, its work has proven critical to increasing the growth of our economy. The free enterprise system works best when our markets remain free and competitive. By vigorously policing anticompetitive conduct, and preventing anticompetitive consolidation, the Commission can help ensure that firms compete on the merits, providing better products and services to consumers at lower prices. Likewise, by stamping out unfair or deceptive trade practices, the Commission can help assure that consumers are protected and have the information they need to make intelligent choices in the marketplace. The FTC is all about protecting and improving consumer welfare.

And one of the great things about this mission historically is that it has been performed in a highly bipartisan way.

I pledge to you today that if honored with confirmation, I will continue to lead the FTC in that rich tradition of bipartisan policymaking and enforcement. I look forward to working alongside my fellow Commissioners, of both parties, to assure the FTC remains as effective in the start of its second century as it did up through the end of its first century.

Where the agency already has the necessary tools to protect consumers, you have my assurance they will vigorously be brought to bear. And where a new approach may be needed, I'll be eager to work with this Committee and its staff in finding a solution.

Thank you again for this opportunity to testify, and I look forward to your questions. I'm humbled by the nomination, and, if honored with confirmation, excited for the work ahead. Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Joseph Jay Simons.
2. Position to which nominated: Commissioner of the Federal Trade Commission.
3. Date of Nomination: October 19, 2017.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.
Office: 2001 K Street, NW, 5th floor, Washington, DC 20006.

5. Date and Place of Birth: May 4, 1958; Brooklyn, NY.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Martha Marie Simons (wife)—Self-employed contractor for Maharishi Foundation USA, Inc., Employment address is home.

Children: Samuel P. Simons (son)—27 years old; Jack W. Simons (son)—24 years old; Lauren L. Simons (daughter)—20 years old; Jaxson L. Zimmerman (stepson)—29 years old; Michelle M. Zimmerman (stepdaughter)—28 years old; Lauren L. Zimmerman (stepdaughter)—24 years old.

7. List all college and graduate degrees. Provide year and school attended.

Cornell University, AB (1980)
Georgetown University Law Center, JD (1983)

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Ocean County Department of Consumer Affairs, Toms River, NJ—Intern (Summer 1980)

Giordano, Halleran & Ciesla, Middletown, NJ—Summer Associate (Summer 1981)

Duncan, Weinberg & Miller, Washington, D.C.—Law Clerk (Fall 1981)

Cohen & Uretz, Washington, D.C.—Law Clerk (Spring 1982–Fall 1982)

Stryker, Tams & Dill, Newark, NJ—Summer Associate (Summer 1982)

Butler & Binion, Houston, TX—Summer Associate (Summer 1982)

*Wald, Harkrader & Ross, Washington, D.C.—Law Clerk and Associate (Spring 1983–1985)

*Skadden, Arps, Slate, Meagher & Flom, Washington, D.C.—Associate (1985–1987)

**Federal Trade Commission, Washington, D.C.—Assistant to the Bureau Director, Assistant Director for Evaluation, and Associate Director for Mergers, Bureau of Competition (1987–1989)

As Associate Director, responsible for supervising half of Commission's merger investigations. As Assistant Director, responsible for managing the Bureau's Evaluation Office.

*Wachtell, Lipton, Rosen & Katz, New York, NY—Associate (1989–1994)

**Collier, Shannon, Rill & Scott, Washington, D.C.—Partner and Counsel (1994–1998)

Madison Oil Company, Dallas, Texas—Board Member and Vice President (Approx. 1993–1998; 2000–2001)

Toreador Resources Corporation, Dallas, Texas—Board Member (approx. 2001–2003)

**Clifford Chance, Washington, D.C.—Partner (1998–2001)

**Federal Trade Commission, Washington, D.C.—Director of the Bureau of Competition (2001–2003)

**Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, D.C.—Partner and Co-Chair of the Antitrust Group (2003–12/31/2017)

Note: items marked with (*) for roles related to nominated position and (**) for managerial roles relating to nominated position.

9. Attach a copy of your résumé. A résumé copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, D.C.—Partner (2003–12/13/2017)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

American Bar Association (1983 to present)
 American Economic Association (approximately 1983 to present)
 Fellow of the American Bar Association (approximately 2012 to present)
 New York Bar (1989 to present)
 District of Columbia Bar (1983 to present)
 Alpha Tau Omega Fraternity (1977 to present)
 U.S. Power Squadrons (approximately 2012 to present)
 National Rifle Association (member on and off over last ten years)
 Executive Club of Wilmington, NC (2016 to present)
 Sport & Health Club, McLean, VA (approximately 2005 to present)
 Sports Club LA, Washington, D.C. (approximately 2003–2015)
 Alpha Tau Omega Fraternity membership is limited to males. Otherwise, Alpha Tau Omega does not restrict membership on the basis of race, color, religion, national origin, age, or handicap. None of the other listed organizations restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

U.S. Senate Victory Committee—\$1,000 (6/30/2010)
 Friends of Dick Lugar—\$1,000 (12/06/2011)
 National Republican Senatorial Committee—\$2,000 (12/13/2011) and \$3,000 (10/15/2010)
 Romney Victory Inc.—\$1,000 (7/20/2012)
 Ted Cruz for Senate—\$1,000 (3/24/2011), \$500 (7/21/2012), \$500 (5/23/12), and \$500 (10/3/2012)
 Zinke for Congress—\$2,600 (11/14/2013)
 Sullivan for U.S. Senate—\$1,000 (10/20/2014)
 Friends of Pat Toomey—\$1,000 (9/17/2015)
 Shelby for U.S. Senate—\$1,000 (11/03/2015)
 Marco Rubio for President—\$1,000 (12/23/2015)
 McHenry for Congress—\$1,000 (6/30/2016)
 Cornyn Majority Committee—\$1,000 (2/15/2017)

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Recognized as a leading antitrust lawyer by Chambers USA, Chambers Global, and The Legal 500.
 Selected to Best Lawyers in America, The International Who's Who of Competition Lawyers and Economists.
 Selected to Crain's New York Business "40 Under 40", which recognizes 40 rising stars under 40 years old in the New York business community.
 Federal Trade Commission Award for Meritorious Service.
 Fellow of the American Bar Foundation.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

The following list reflects the best of my recollection and a diligent search, but it is possible that there is an article, presentation or speech that I have no record of or was unable to locate.

A Practical Guide to Merger Analysis, with Steven Salop, 29 Antitrust Bulletin 663 (Winter 1984).

Fixing Price with Your Victim: Efficiency and Collusion with Competitor Based Formula Pricing Clauses, 17 Hofstra Law Review 599 (1989).

Focusing Market Definition: How much Substitution is Necessary?, with Barry Harris, 12 Research In Law and Economics 207 (1989), reprinted at 21 The Journal of Reprints for Antitrust Law and Economics 151 (1992).

Real Estate Multiple Listings Services and Antitrust Revisited, with John Lopatka, in M. Geurin-Calvert and S. Wildman (eds.), Electronic Services Networks: A Business and Public Policy Challenge (Prager: 1991).

The Often-Forgotten Role of Price-Cost Margins in Antitrust Merger Analysis, with Barry Harris, 6 International Merger Law (February 1991)

Horizontal Mergers in Spatially Differentiated Noncooperative Markets, with Preston McAfee and Michael Williams, 40 Journal of Industrial Economics 349 (1992).

New U.S. Merger Enforcement Guidelines: Competitive Effects, with Michael Williams and Preston McAfee, 21 International Merger Law (May 1992).

The Renaissance of Market Definition, with Michael Williams, 38 Antitrust Bulletin 799 (1993).

Co-author with James Loftis of chapters on vertical mergers, conglomerate mergers, and potential competition in R. Schlossberg and C. Aronson (eds.), MERGERS AND ACQUISITIONS (ABA: 2000).

Keynote Address to the Tenth Annual Golden State Antitrust and Unfair Competition Law Institute Santa Monica California (October 2002).

Report from the Bureau of Competition, Presentation at the 2003 ABA Antitrust Section Spring Meetings (April 2003).

FTC Initiatives in Intellectual Property, oral remarks at the American Intellectual Property Law Association (May 2003).

The State of Critical Loss Analysis: Let's Make Sure We Understand the Whole Story, with David Scheffman, The Antitrust Source (November 2003).

Non-Merger Enforcement at the FTC: An Aggressive Proconsumer Agenda, with David Scheffman, Antitrust Bulletin 471 (Fall 2004).

Antitrust Issues in Bidding for Corporate Control, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (10/11/2006).

Department of Justice Gives Antitrust Guidance to Standards Development Organizations, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (11/08/2006).

FTC Announces Revised Hart-Scott-Rodino Thresholds, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/25/2007).

New Supreme Court Decision Changes Standard on Motions to Dismiss, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/21/2007).

DOJ Challenges Non-HSR Reportable Transactions, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/29/2007).

Supreme Court Overrules Dr. Miles and Holds That Vertical Price Restraints Are Not Per Se Illegal, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/02/2007).

In the Courts: A Changed Standard on Motions to Dismiss, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/14/2007).

Prohibition on Interlocking Directorates May Prohibit a Firm From Appointing Its Agents to Serve As Directors of Competing Corporations, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (11/13/2007).

District Court Dismisses Antitrust Class Action Complaint Against Private Equity Firms, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/26/2008).

DC Circuit Rules in FTC's Favor on Whole Foods-Wild Oats Merger, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (08/04/2008).

Court Declines to Dismiss Antitrust Claim Alleging Private Equity Firms Allocated Market For Leveraged Buyouts, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (12/18/2008).

President Obama Announces Key Antitrust Nomination: What to Expect From the FTC and DOJ in the New Administration, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/22/2009).

Recent DC Circuit Decisions in Whole Foods Leave Standard for Future Mergers Unsettled, with Ilene Gotts, Aidan Synnott and George Conway, Competition Law International 9 (Feb. 2009).

Federal Appeals Court Tightens Standards For Class Certification in Antitrust Actions, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/02/2009).

U.S. Supreme Court Addresses "Price Squeeze" Claim and Application of Twombly Pleading Standard to Section 2 of the Sherman Act, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/26/2009).

Leibowitz Named FTC Chairman, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (03/09/2009).

Implications of Pacific Bell v. Linkline, with Andrew Finch and William Michael, Law 360 (03/31/2009).

DOJ Antitrust Division Declares Reverse Settlements "Presumptively Unlawful", Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/20/2009).

Department of Justice Proposes "Structured Rule of Reason" Approach to Resale Price Maintenance Claims, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (10/12/2009).

Interlocks Under Section 8 of the Clayton Act: Implications of the FTC's Investigation of Apple and Google, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (10/14/2009).

Ninth Circuit Courts Reject Antitrust "Bundling" Claims In Two Recent Cases, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (11/16/2009).

Critical Loss v. Diversion Analysis: Clearing up the Confusion, with Malcolm Coate, The Antitrust Chronicle (Dec. 2009).

The Potential Impact of New Economic Tests in Merger Analysis: A New Direction? (Presented at the ABA Antitrust Section Spring Meetings March 2010).

Court Rejects FTC Challenge to Reverse Settlement Agreement, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (03/01/2010).

Critical Loss v. Diversion Analysis: Another Attempt at Consensus, with Malcolm Coate, The CPI Antitrust Journal (April 2010).

Unilateral Effects for Differentiated Products: Theory, Assumptions and Research, with David Scheffman, The Antitrust Source (April 2010).

U.S. Antitrust Agencies Propose Revisions to Merger Guidelines, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (04/22/2010).

Second Circuit Invites Rehearing in Reverse Settlement Case, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/06/2010).

Upper Pressure on Price Analysis, with Malcolm Coate, 6 European Competition Journal 377 (August 2010).

U.S. Antitrust Agencies Issue Revised Merger Guidelines, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (08/26/2010).

Continuity and Change in the 2010 Merger Guidelines, with Malcolm Coate, CPI Antitrust Journal (Oct. 2010).

The 2010 Merger Guidelines, Critical Loss and Linear Demand, with Jay Ezrielev, 7 Journal of Competition Law and Economics 497 (2011).

Court of Appeals Upholds Antitrust Conspiracy Claim, Addresses Application of Twombly, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/18/2011).

Seventh Circuit Affirms Dismissal of "Buyers' Cartel" Claim, Provides Guidance Regarding Premiere Information Sharing, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/24/2011).

Eighth Circuit Affirms Summary Judgment for Medical Device Supplier in Antitrust Case Challenging Pricing Practices, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (06/20/2011).

In Dismissal of Hospital's Tying Claim Against Drug Manufacturer, Third Circuit Takes Narrow View indirect Purchaser Requirement, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (06/27/2011).

Hart-Scott-Rodino Reporting Requirements Amended, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/13/2011).

A Comment on Choosing Among Tools for Assessing Unilateral Effects Analysis, with Malcolm Coate, 8 European Competition Journal 429 (2012).

In Defense of Market Definition, with Malcolm Coate, 57 Antitrust Bulletin 667 (Winter 2012).

A Comment on the Articles in the Special Kaplow Edition, with Malcolm Coate, 57 Antitrust Bulletin 953 (Winter 2012).

Known Unknowns: Uncertainty and its Implication for Antitrust Policy and Enforcement in the Standard-Setting Context, with Bruce Hoffman, 57 Antitrust Bulletin 89 (Spring 2012).

Hart-Scott-Rodino Enforcement: Executive Equity Awards Can Trigger HSR Filing Obligations, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/06/2012).

Third Circuit Holds that "Reverse Settlement" Payments Are Prima Facie Evidence of an Antitrust Violation. Widening Circuit Split, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/19/2012).

Supreme Court Reverses Certification of Antitrust Class Action But Defers Decision on Standards for Expert Testimony, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (04/04/2013).

Federal Court Rules "Loyalty Discounts" Do Not Violate Antitrust Laws Unless Below-Cost, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (04/22/2014).

Seventh Circuit Affirms Dismissal of Antitrust Claims Based on Foreign Purchases, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (12/09/2014).

FTC Announces New Hart-Scott-Rodino and Clayton Act Section 8 Thresholds, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/21/2015).

Fifth Circuit Reverses Jury Verdict for Antitrust Plaintiffs, Finding Lack of Sufficient Evidence to Establish a Conspiracy, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/23/2015).

Court of Appeals Upholds Decision Unwinding Consummated Merger of Two Physician Groups Following FTC Suit, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/17/2015).

Supreme Court Holds State Regulatory Board Controlled by Active Market Participants Is Not Immune from Antitrust Liability, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/27/2015).

Sixth Circuit Court of Appeals Adopts Below-Cost Standard for "Non Explicit" Tying Arrangements, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (03/30/2015).

Third Circuit Court of Appeals Joins Other Circuits in Applying Daubert to Expert Testimony at Class Certification, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (04/13/2015).

Second Circuit Applies Rule of Reason to Uphold Preliminary injunction Preventing Manufacturer from Removing Alzheimer's Drug from Market, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (06/03/2015).

Federal Judge Preliminarily Enjoins Sysco-U.S. Foods Merger and Parties Abandon the Transaction, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/02/2015).

FTC's Challenge to Family Dollar/Dollar Tree Merger Suggests Potential for Significant Increase in Merger Enforcement, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/27/2015).

Federal Judge Denies FTC's Bid to Preliminarily Enjoin Steris-Synergy Health Merger, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (09/28/2015).

Recent Enforcement Actions Highlight Importance of Hart-Scott-Rodino Compliance When Acquiring Voting Securities, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (10/08/2015).

FTC Announces New Hart-Scott-Rodino and Clayton Act Section 8 Thresholds, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/26/2016).

Second Circuit Affirms Dismissal of Sherman Act Claims Based on Failure to Allege a Plausible Geographic Market Definition, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (03/22/2016).

District Court Dismisses Tying and Bundling Claims, Holding that Medical Surgical Distributor Failed to Show Market Power or Injury to Competition, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (04/12/2016).

Executive Order Calls on Agencies to Address Industry Concentration: The Implications for Common Ownership Interests, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/03/2016).

Third Circuit Court of Appeals Affirms Dismissal of Claim that "Loyalty Discounts" Violate Antitrust Laws, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/06/2016).

Federal Court Blocks Staples-Office Depot Merger, Finding Sale of Office Supplies to Large Business Customers to Be a Distinct Relevant Market, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (05/20/2016).

U.S. Justice Department Requires Restructuring of Transaction Involving Foreign Entities to Address Section 8 Interlocking Directorates Concern, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (07/19/2016).

Amendments to the HSR Rules Including Allowing Submission of HSR Filings via DVD, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (08/29/2016).

Deferring to China's Interpretation of Its Own Regulation. Second Circuit Throws Out \$147 Million Antitrust Judgment, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (09/22/2016).

Department of Justice and FTC Release Antitrust Guidance for Employee Hiring and Compensation, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (11/10/2016).

Settling an Antitrust Case, with Daniel Crane, Chapter 31 in *Settlement Agreements in Commercial Disputes: Negotiating, Drafting and Enforcement Volume 2* (Wolters Kluwer 2017).

FTC Announces New Hart-Scott-Rodino and Clayton Act Section 8 Thresholds, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (01/26/2017).

FTC Releases Study Examining Merger Remedies Between 2006 and 2012, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Client Alert (02/17/2017).

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I have worked at the Federal Trade Commission twice before, the last time as Director of the Bureau of Competition, with responsibilities for roughly half of the agency's mission. My tenure there was both active and highly successful. The Commission during that time brought more non-merger enforcement actions than in any comparable period two decades before or since, while remaining very active in merger enforcement as well. As a matter of personal pride, those efforts were characterized by a high degree of bipartisanship.

In private practice, I have spent about 30 years representing clients largely before the Federal Trade Commission and the Department of Justice Antitrust Division, an experience which provides valuable insights that can be applied in running the agency.

I am seeking this appointment for the following reasons. Our country's economic potential is unmatched, and the Federal Trade Commission has an important role to play in making sure we exploit that advantage in a way that benefits U.S. consumers to the greatest extent possible, and at the same time, creates more jobs. Our economy is based largely on free enterprise, a system designed to incentive sellers to produce the best products at the lowest prices. But such a system requires rules of the road (and a reliable referee to enforce them) to ensure that it stays true to its purpose. Those rules must prohibit anticompetitive conduct and help ensure consumers are protected from deceptive and unfair practices. The chance to play a sig-

nificant role in enabling the FTC to fulfill that mission would be a great opportunity and honor.

Between my two prior stints at the FTC, and my experience in private practice, I feel as though I have been essentially training for this job since law school. Furthermore, I love the agency's mission, the stimulating issues it deals with, and its outstanding personnel. I am confident that I am in an excellent position to be successful as Commissioner if confirmed.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I would be responsible for ensuring that the FTC has proper management and accounting controls. In terms of experience, I was previously Director of the Bureau of Competition and responsible for roughly half of the agency's mission, which involved personnel management and budgeting. I have also had managerial experience running cell phone businesses worth over \$2 billion as a trustee for the Department of Justice and the Federal Communications Commission.

20. What do you believe to be the top three challenges facing the department/agency, and why?

1. Significant concerns have been raised that the Federal antitrust agencies have been too permissive in dealing with mergers and acquisitions, resulting in harm to consumer welfare via increased prices, limited consumer choice, and harm to workers. Addressing these concerns is critical, as they lie at the heart of the agency's competition mission. The FTC needs to devote substantial resources to determine whether its merger enforcement has been too lax, and if that's the case, the agency needs to determine the reason for such failure and to fix it. Even if the evidence shows no such failure, it would be good practice to evaluate more systematically the Commission's merger enforcement program through the regular use of retrospective studies to prevent potential problems in the future. It would also be good practice to extend the retrospectives to non merger matters as well.

2. The FTC recently conducted a study of its merger remedies and concluded that cases involving divestitures of asset packages not involving stand-alone businesses had a 30 percent failure rate. That rate is too high and needs to be lowered substantially or, ideally, zeroed out altogether.

3. Rapid changes in technology and cyber threats provide a significant challenge to the Agency's ability to fulfill its consumer protection mission and provide meaningful guidance to the business community. It is critical, despite these challenges, that the FTC protect consumers without unduly burdening them or interfering with the ability of firms (especially small firms and new entrants) to use data to enhance competition.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I retired from Paul, Weiss, Rifkind, Wharton & Garrison LLP effective 12/31/2017. I will receive my final partnership share distribution as a single, lump sum payment prior to assuming the duties of my Federal position. The total amount of the payment will be calculated as of the date of my retirement from the partnership.

Pursuant to the firm's partnership agreement and the firm's handbook, I have been provided an office, secretarial services, access to a computer and computer services, and the ability to participate in the firm's health insurance plan. Upon confirmation, I will forgo all of these benefits.

I will continue to participate in the Paul, Weiss, Rifkind, Wharton & Garrison LLP defined benefit plan under which I will receive approximately \$13,154 per month beginning in 2018.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

If confirmed, I would work diligently with my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

If confirmed, I would work diligently with my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF JOSEPH J. SIMONS

Retired Partner (Of Counsel); Paul, Weiss, Rifkind, Wharton & Garrison LLP, 2001 K Street, NW, Washington, D.C.

Formerly, a partner and co-chair of the Antitrust Group, Joe Simons focused on antitrust M&A, litigation and counseling. Prior to joining Paul, Weiss, he was the chief antitrust enforcer at the Federal Trade Commission (FTC), serving as Director of the Bureau of Competition from June 2001 until August 2003. Under his leadership, the Commission pursued a strong bipartisan enforcement agenda under which all but one of the more than 70 antitrust enforcement actions taken by the agency were by unanimous vote. During his tenure, the FTC prevailed in all of the 46 merger enforcement actions taken by the Commission. Joe was responsible for overseeing the re-invigoration of the FTC's non-merger enforcement program, initiating well over 100 investigations in two years and producing more non-merger enforcement actions in one year than in any year in the prior two decades. He also initiated a new emphasis at the FTC on administrative litigation, substantially increasing the number of trials before the agency, including merger, monopolization and horizontal restraint cases.

Experience

Joe has extensive experience representing clients before the FTC, the Department of Justice, the Department of Defense, and Congress in a wide range of antitrust and regulatory matters, from the largest mergers and acquisitions to price fixing and novel predation and vertical restraints cases. He has represented clients in numerous industries ranging from airlines and computer reservations systems to telecommunications, defense contracting, consumer electronics, music, financial services, credit cards, transportation, agriculture, health care, soft drink concentrate, beer, aluminum can sheet and software.

Some of his work includes representing:

- *Rockstar*, a consortium including *Microsoft*, *Eriksson*, *RIM* and *Sony*, in its \$4.5 billion acquisition of the patent portfolio of *Nortel Networks* in a bankruptcy court approved auction. Paul, Weiss is representing both *Ericsson* and the consortium in seeking antitrust clearance in the U.S.;
- *Sharp Corporation* in antitrust litigation and investigations of cartel activity related to liquid crystal display units;
- *Ericsson* in its acquisitions of the CDMA, GSM and Passport businesses of *Nortel Networks* in several bankruptcy court approved auctions for aggregate consideration in excess of \$1.3 billion. The transactions required antitrust clearance in numerous jurisdictions including U.S., Europe and China;
- *Mastercard Inc.* in antitrust class actions in federal court in New York involving all merchants in the United States that accept Master, alleging that the fees merchants pay when consumers use credit and debit cards are fixed illegally under antitrust laws; and
- *The Lightsome Group* on antitrust issues in connection with the disposition of its portfolio company, *Prime Outlets Acquisition Company*, to *Simon Property Group, Inc.* in a transaction valued at approximately \$2.3 billion, which was subject to an FTC investigation.

Along with a former chief economist of the Department of Justice Antitrust Division, Joe developed "Critical Loss Analysis," a technique for market definition that has been adopted and used widely by the Antitrust Division, the FTC, and the U.S. Court of Appeals. It was incorporated into the DOJ/FTC Merger Guidelines. Critical Loss Analysis also plays a fundamental role in evaluating the competitive effects of transactions as well. Joe was also the first practicing attorney to evaluate monopolization and vertical restraints under the theory of "Raising Rivals Costs" and contributed to the development of the theory, which now plays a significant role in the analysis of such cases at both Federal antitrust enforcement agencies.

Joe's history with the FTC's Bureau of Competition started in the late 1980s when he served as the Associate Director for Mergers and the Assistant Director for Evaluation, respectively. In the former position, he was responsible for supervising numerous merger investigations, and as head of the Evaluation Office, he was responsible for analysis of all of the Competition Bureau's non-merger matters.

While in private practice in 2000, Joe was nominated by the Department of Justice, and approved by the Federal Communications Commission and Federal District Court, as trustee of four wireless telephone businesses relating to the GTE/Bell Atlantic/Vodafone transaction. In that capacity, he became the holder of the FCC licenses to these properties, making him the 10th largest wireless carrier in the

United States, and he was responsible for managing and divesting these businesses valued at over \$2 billion. He performed a similar function for the Cingular/AT&T Wireless transaction.

Joe has published a wide range of articles on antitrust-related topics, including two papers appearing in refereed economics journals, one of which was selected for *The Journal of Reprints for Antitrust Law and Economics*. He co-authored an article published in Oxford's *Journal of Competition Law & Economics* titled "The 2010 Merger Guidelines, Critical Loss, and Linear Demand." Most recently, he co-authored "In Defense of Market Definition," published in the Winter 2012 issue of *The Antitrust Bulletin*, a special issue with articles written in response to Professor Louis Kaplow's *Harvard Law Review* article "Why (Ever) Define Markets?"

Joe continues to be recognized as a leading antitrust lawyer by *Chambers USA*, *Chambers Global* and *The Legal 500*. For the past three years, he has also been acknowledged by his peers for inclusion in *The Best Lawyers in America*. Joe was selected to "The International Who's Who of Competition Lawyers & Economists 2013" by the *Global Competition Review*. Earlier in his career, he was selected to *Crain's New York Business* "40 Under 40," which recognizes 40 rising stars in the New York business community.

Practices

Antitrust
Litigation

Education

J.D., Georgetown University Law Center, 1983 *cum laude*
A.B., Cornell University, 1980

Recognitions

The Best Lawyers in America
Chambers USA
Crain's New York Business
"40 Under 40"
The Legal 500

January 31, 2018

Christian S. White
Designated Agency Ethics Official
Federal Trade Commission
Washington, DC.

Dear Mr. White:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Commissioner of the Federal Trade Commission.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have resigned from my position with the law firm of Paul, Weiss, Ritkind, Wharton & Garrison LLP. Pursuant to the firm's customary partnership agreement, I am entitled to receive my final partnership share distribution as a single, lump sum payment. I have received a single, lump sum payment of my capital account on January 12, 2018. My partnership share distribution will be calculated as of the date of my resignation and will be received prior to assuming the duties of my Federal position. For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which I know Paul, Weiss, Ritkind, Wharton & Garrison LLP, is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R.

§ 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party, for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

Finally, I understand that my obligation to comply with ethics laws and regulations is ongoing and will require vigilance regarding any changes in my financial interests, the financial interests of persons and organizations imputed to me under the ethics laws and regulations, and other outside interests.

I have disclosed in my financial disclosure report my financial interest in Handy Place IV LLP. However, a preexisting confidentiality agreement barred me from identifying the underlying assets of this fund in my financial disclosure report. Therefore, I will divest my financial interest in this fund as soon as possible after confirmation and not later than 90 days after my confirmation. Until I have divested Handy Place IV LLP, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of that fund or its underlying assets, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that I may be eligible to request a Certificate of Divestiture for qualifying assets and that a Certificate of Divestiture is effective only if obtained prior to divestiture. Regardless of whether I receive a Certificate of Divestiture, I will ensure that all divestitures discussed in this agreement occur within the agreed upon timeframe and that all proceeds are invested in non-conflicting assets.

My spouse is an independent contractor for Maharishi Foundation USA, Inc and she receives a commission tied to her personal services. For as long as my spouse continues to serve Maharishi Foundation USA, Inc. as an independent contractor, I will not participate personally and substantially in any particular matter involving specific parties in which I know Maharishi Foundation USA, Inc., is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I rely on a *de minimis* exemption under 5 C.F.R. § 2640.202 with regard to any of my financial interests in securities, I will monitor the value of those interests. If the aggregate value of interests affected by a particular matter increases and exceeds the *de minimis* threshold, I will not participate personally and substantially in the particular matter that to my knowledge has a direct and predictable effect on the interests, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I will meet in person with you during the first week of my service in the position of Commissioner to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Finally, I understand that my obligation to comply with ethics laws and regulations is ongoing and will require vigilance regarding any changes in my financial interests, the financial interests of persons and organizations imputed to me under the ethics laws and regulations, and other outside interests.

Sincerely,

Joseph J. Simons.

The CHAIRMAN. Thank you, Mr. Simons.
Ms. Wilson.

**STATEMENT OF CHRISTINE S. WILSON, NOMINEE TO BE A
COMMISSIONER, FEDERAL TRADE COMMISSION**

Ms. WILSON. Mr. Chairman, Ranking Member Blumenthal, Senator Capito, distinguished members of the Committee, I am deeply honored to have been nominated by President Trump to serve as a Commissioner of the Federal Trade Commission. Thank you for the time that you and your staffs spent with us during the last couple of weeks, and for inviting us here today.

And thank you also, Senator Capito, for your words of confidence, which I appreciate.

I am joined here today by my husband, Ramsey Wilson; my daughters, Regan and Savannah Wilson; my niece, MicKayla Smith; and my in-laws, Kate and Tom Mason; as well as a number of very close friends. I would echo what Joe said: without their love and support, I would not be here today.

If confirmed, serving as Commissioner will be my third job at the FTC. I first spent time there while I was in law school as a law clerk in the agency's Bureau of Competition. I returned as Chief of Staff to Chairman Tim Muris under President George W. Bush. These roles helped me understand the pride that FTC personnel rightly take in their agency and in their mission. With fewer than 1,200 employees, the FTC routinely tackles issues of daily importance to Americans in every walk of life. Deploying its finite resources to maximum advantage, the FTC promotes the interests of consumers by ensuring the effective operation of markets, typically in a bipartisan way. But the agency must be careful to wield its power appropriately. To use a sports analogy coined by then-Chairman Muris, the FTC must avoid trading its role as referee of our markets for one as a manager of, or a star player in, those markets.

As it enters its second century, the FTC has much important work ahead of it to continue protecting consumers, including preserving competition in health care markets; staying abreast of technological advances and tailoring the FTC's advocacy and enforcement efforts accordingly; and promoting the sound economic analysis of competition and consumer protection issues, both domestically and abroad.

Each of us, if confirmed, will bring his or her experiences to the role of Commissioner. The most notable experience for me occurred in 1984. Ronald Reagan was our President, I was in high school, and I took a three-week trip behind the Iron Curtain. I saw firsthand the long lines, empty shelves, and misery inflicted by an authoritarian government and a command-and-control economy. I finished that trip an ardent advocate for personal liberty and market economies. And, yes, my older daughter is named after President Reagan.

That trip through Eastern Europe and the Soviet Union was the first in a series of events that led me here today. Other key milestones are attributable to distinguished mentors with whom I have been blessed: University of Florida Professor Roger Blair, who taught my first antitrust law and economics class and who showed me the possibility of a career in this field; Professor Steve Salop, an antitrust economist for whom I worked as a research assistant while at Georgetown Law; Jim Rill, the former DOJ Assistant At-

torney General for Antitrust, for whom I worked after graduating from law school and who is here with us today; and Tim Muris, for whom I served as Chief of Staff. Each of them was instrumental in enhancing my understanding of antitrust and consumer protection law and policy, and I am deeply indebted to them.

Thank you for considering my nomination. I look forward to answering your questions.

[The prepared statement and biographical information of Ms. Wilson follow:]

PREPARED STATEMENT OF CHRISTINE S. WILSON, NOMINEE FOR COMMISSIONER,
FEDERAL TRADE COMMISSION

Mr. Chairman, Ranking Member Nelson, members of the Committee, I am deeply honored to have been nominated by President Trump to serve as a Commissioner of the Federal Trade Commission. Thank you for the time that you and your staff have spent meeting with me, and for inviting the four FTC nominees to appear here today.

I am joined by my husband, Ramsey Wilson; my daughters, Regan Wilson and Savannah Wilson; my niece, MicKayla Smith; and my in-laws, Tom and Kate Mason. If confirmed, serving as Commissioner will be my third job at the FTC. I first spent time at the FTC as a law clerk in the Bureau of Competition while in law school. I returned to the FTC as Chief of Staff to Chairman Timothy J. Muris during the first term of President George W. Bush.

These previous roles helped me understand the pride that FTC personnel rightly take in their agency and in their mission. Although it has fewer than 1,200 FTEs, the FTC tackles issues of daily importance to Americans in every walk of life. Deploying its finite resources to maximum advantage, the FTC promotes and protects the interests of consumers by ensuring the effective operation of markets, and it typically does so in a bipartisan way. But the agency—which the Washington Post disparaged as the “National Nanny” during the 1970s—must be careful to wield its power appropriately. To use a sports analogy coined by then-Chairman Muris, the FTC must avoid trading its role as referee of our markets for one as a manager of, or a star player in, those markets.

The FTC recently entered its second century. In the coming years, the agency has much important work ahead of it to continue protecting consumers, including preserving competition in health care markets; staying abreast of technological advances and tailoring the FTC’s advocacy and enforcement efforts accordingly; and promoting the sound economic analysis of competition and consumer protection issues both domestically and internationally.

Each of us, if confirmed, will bring his or her experiences and perspectives to the role of Commissioner. One of the most notable experiences for me occurred in 1984. Ronald Reagan was our President, I was in high school, and I took what would become a formative trip behind the Iron Curtain. During this three-week trip, I saw first-hand the long lines, empty shelves, and misery inflicted by an authoritarian government and a command and control economy. I finished that trip an ardent advocate for personal liberty and market economies.

That trip through Eastern Europe and the Soviet Union was the first in a series of events that ultimately led me here today. Other important milestones on that path are attributable to distinguished mentors with whom I have been blessed—University of Florida Professor Roger D. Blair, who taught my first antitrust law and economics class and who opened my eyes to the possibility of a career in this field; Professor Steven C. Salop, an antitrust economist whose classes I took and for whom I worked as a research assistant while at Georgetown Law; James F. Rill, the former DOJ Assistant Attorney General for Antitrust for whom I worked after graduating from law school; and Timothy J. Muris, the FTC Chairman for whom I served as Chief of Staff. Each of them was instrumental in enhancing my understanding of antitrust and consumer protection law and policy. I am deeply indebted to them.

Thank you for considering my nomination. I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Christine S. Wilson.
Former names: Christine Alyssa Bishop Smith; Christine Smith Chambers; Christine Chambers Wilson.
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: January 25, 2018.
4. Address (List current place of residence and office addresses):
Residence: Information not released to the public.
Office: Delta Air Lines, 1212 New York Ave. Suite 200, Washington, D.C. (Feb. 1, 2018 was my last day with Delta).
5. Date and Place of Birth: May 15, 1970; Orlando FL.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Ramsey J. Wilson (self-employed attorney)
Regan Katherine Bishop Wilson, 18
7. List all college and graduate degrees. Provide year and school attended.
Georgetown University Law Center, J.D., *cum laude* (1995)
University of Florida, B.A., Phi Beta Kappa (1991)
8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
Senior Vice President—Legal, Regulatory & International, Delta Air Lines (2016 to Feb. 1, 2018)*
Partner, Antitrust Group, Kirkland & Ellis LLP (2011–2016)*
Partner, Antitrust Group, O'Melveny & Myers LLP (2004–2011)*
Consultant to Howrey, Simon, Arnold & White, LLP (2004)*
Consultant to Chairman Timothy J. Muris, Federal Trade Commission (2003–2004)*
Chief of Staff to Chairman Timothy J. Muris, Federal Trade Commission (2001–2002)*
Senior Associate, Howrey, Simon, Arnold & White, LLP (2000–2001)*
Associate, Collier, Shannon, Rill & Scott PLLC (1995–2000)*
Law Clerk, Collier, Shannon, Rill & Scott PLLC (1995)*
Law Clerk, Bureau of Competition, Federal Trade Commission (1994)*
Research Assistant, Professor Steven C. Salop, Georgetown University Law Center (1993–1994)*
Temporary Assistant, Washington DC (part time) (1992–1993)
Assistant, TREEO Center, University of Florida (1991–1992)
** denotes management-level jobs and non-managerial jobs that relate to the position for which I have been nominated.*
9. Attach a copy of your résumé. See Attachment A.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.
Advisor to the U.S. Government in connection with the International Competition Network (approximately 2007–2009)
Special Assistant to James F. Rill, Co-Chair of the International Competition Policy Advisory Committee commissioned by Attorney General Janet Reno
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.
Senior Vice President—Legal, Regulatory & International, Delta Air Lines (2016 to Feb. 1, 2018)
Partner, Antitrust Group, Kirkland & Ellis LLP (2011–2016)

Partner, Antitrust Group, O'Melveny & Myers LLP (2004–2011)

Director, The Dignity Restoration Project, Restoration Anglican Church (2013–2014)

Director, Casa Chirilagua (2011)

Director, Truth & Grace Ventures (2006–2011)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Restoration Anglican Church, Arlington VA (2009 to present)

The Falls Church Anglican, Falls Church VA (2005–2008)

American Bar Association Section of Antitrust: I have served in a variety of capacities, including Vice Chair, Federal Civil Enforcement Committee; Vice Chair, Transportation and Energy Committee; Member, Task Force on Foreign Investment, Trade Policy, and Sectoral Review; Member, Research Institute; and Editor, Antitrust Law Developments Update (1995 to present).

The Grapevine: I co-founded The Grapevine, a network of competition and consumer protection women professionals inside the Beltway, in 2011. I served in the leadership of the organization until 2016, when I moved to Delta Air Lines. Although mailings about events are sent only to women, men occasionally attend events.

Competition Committee, U.S. Council for International Business (2004–2010)

Competition Committee, Business and Industry Advisory Committee to the OECD (2004–2010)

District of Columbia Bar Association (admitted 1999)

Virginia Bar Association (admitted 1995) (inactive)

National Rifle Association (2014)

Except as explained for The Grapevine, none of these organizations restrict membership on the basis of sex, race, color, religion, national origin, age, or handicap.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Political Contributions of \$500 or more within last ten years

- I contributed \$1,666.64 to the Delta Air Lines Political Action Committee in 2016, \$5,000 in 2017, and \$416.66 in 2018. These contributions were used to make donations to Congressional candidates campaigning for (re)election.
- I contributed \$2,700 in March 2016 to Cruz for President.
- I made two contributions to Romney for President, Inc. in 2012 totaling \$5,000.
- I made two contributions to Romney Victory, Inc. totaling \$5,000 in 2012.
- In 2011, I contributed \$2,500 to Ted Cruz for Senate.
- In 2010, I contributed \$500 to Americans for Murray (Patrick J. Murray).

Services rendered to an election committee within the last ten years

Antitrust Committee, McCain Presidential Campaign (2007–2008)

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

I have been ranked as a leading antitrust practitioner in Chambers USA, The Legal 500 U.S., and Euromoney's Guide to the World's Leading Competition and Antitrust Lawyers.

Washingtonian's Top 40 Under 40 Lawyers (2011)

Women Worth Watching (2010), Profiles in Diversity

Phi Beta Kappa

Various academic scholarships and awards

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

See Attachment A.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

As a high school student in 1984, I traveled through several countries behind the Iron Curtain. During that trip, I witnessed first-hand the consequences of an authoritarian government and a centrally planned economy, and finished that trip an ardent advocate for a market economy and personal liberty.

The foundation for my career as an antitrust lawyer was laid in undergraduate school, when I took a graduate level class on antitrust law and economics taught by Prof. Roger Blair. That class taught me how I could help promote competitive markets in the U.S. At Georgetown University Law Center, I worked as a research assistant for Prof. Steven Salop, an antitrust economist. I also got my first FTC job during law school. Upon graduation in 1995, I began practicing with James F. Rill, former AAG for the Antitrust Division under George H.W. Bush. And in 2001, I returned to the FTC as Chief of Staff to Chairman Timothy J. Muris.

These distinguished mentors taught me a great deal about domestic and international antitrust law and policy, antitrust economics, and consumer protection. They also instilled in me the benefits of public service. The most important experience of my professional career to date was serving as Chief of Staff to FTC Chairman Muris. Each night, I headed home from work knowing that I was making a difference for American consumers by promoting the basic rules that help a market economy work to the benefit of consumers.

I seek to return to public service to ensure the sound application of the antitrust and consumer protection laws to the benefit of consumers, and to capitalize on the ability of the FTC to advocate for sensible market-based approaches both in the U.S. and abroad.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed, I would work diligently with my fellow Commissioners to ensure that the Federal Trade Commission has proper management and accounting controls. I would bring to bear my experience as Chief of Staff to Chairman Timothy J. Muris, my experience in helping to manage the antitrust practice groups at Kirkland & Ellis and O'Melveny & Myers, and my experience overseeing the regulatory and international groups and participating in the management of the law department at Delta Air Lines.

20. What do you believe to be the top three challenges facing the department/agency, and why?

- Health care expenditures as a percentage of GDP have been growing for several decades, and accounted for 17.9 percent of GDP in 2017. Given the importance of this sector to ordinary Americans, the FTC has long devoted significant attention to this arena. Both the FTC's Bureau of Competition and its Bureau of Consumer Protection have played a key role in promoting vibrant competition, ensuring accurate information about products and services, protecting consumers' sensitive medical information, and advising government entities on the likely impact of new regulations on entry and competition. The past decade has seen significant regulatory and technological changes that impact health care, as well as notable innovations in how health care is delivered to patients. The continuing growth of this sector, combined with significant concerns about health care costs, misuse of sensitive data, and burgeoning occupational licensing requirements, underscore the need for the FTC to maintain its focus on this industry. It is imperative for the FTC to continue increasing its understanding of how these developments affect patient choice and the quality of patient care, and how these changes should be incorporated into the Commission's advocacy and enforcement efforts.

- Trade across borders and the rapid proliferation of competition and consumer protection regimes generate benefits for consumers and businesses, but also give rise to potential pitfalls. Consumers can easily fall prey to fraudsters who have never set foot on U.S. soil, and foreign cartels can raise the prices of goods imported into the U.S. American businesses can face exclusionary conduct from foreign competitors that limits access to markets overseas, and foreign governments can apply their competition laws in ways that disproportionately disadvantage U.S. companies. The FTC, together with the DOJ Antitrust Division, has long played a role in coordinating with and providing technical assistance to competition and consumer protection agencies in other jurisdictions. But challenges remain, and now more than ever the FTC and the DOJ Antitrust Division must assume a global leadership role in advancing sensible antitrust and consumer protection policies that promote competition, protect consumers, and move away from the use of competition and consumer protection regimes to favor national champions and advance industrial policy goals.
- Advances in technology create many benefits for consumers but present enforcement complexities for the FTC. Some of the most controversial public policy issues—*e.g.*, the intersection of intellectual property and antitrust, data security and privacy—are rooted in continuing technological advances. An informed understanding of how technologies work and how their use affects consumers is therefore necessary to the sensible and economically grounded exercise of the FTC’s authority. The FTC historically has taken advantage of its unique R&D capabilities—including 6(b) studies, hearings, and workshops—to stay abreast of technological developments that may implicate new enforcement priorities and challenges, to fashion sound enforcement policies, and to make policy recommendations to Congress, as well as to Federal and state agencies. The FTC is well positioned to be a thought leader on the complex issues that arise in this arena, and should continue taking full advantage of that capability.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.
 - a. Delta Air Lines 401(k): I will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.
 - b. Delta Air Lines unvested restricted stock: I received restricted stock awards at 3 different times (initial equity award, 2016 Long Term Incentive Plan, and 2017, Long Term Incentive Plan). Under the LTIP, a portion of the award vests each year. The Delta Air Lines, Inc. Officer and Director Severance Plan provides for the pro rata vesting of restricted stock at separation. I will receive that vested share and will forfeit the portion that remains unvested.
 - c. Delta Air Lines unvested stock options: I received unvested stock options under the 2017 Long Term Incentive Plan. Under the LTIP, a portion of the award vests each year. The Delta Air Lines, Inc. Officer and Director Severance Plan provides for the pro rata vesting of stock options at separation. I will receive that vested share and will forfeit the portion that remains unvested.
 - d. Delta Air Lines travel benefit: Pursuant to Delta’s travel benefit plan and Officer and Director Severance Plan, for up to 15 months after February 1, 2018, I will continue to receive the same travel benefit I received as an employee. During my appointment, I will not exercise my entitlement to these Delta travel benefits. In addition, in December 2018, Delta will calculate the travel I took from November 1, 2017 to January 31, 2018 and impute the income into my W2 and pay my income taxes up to the maximum of my tax allowance. For travel after January 31, 2018, Delta will impute the income but not pay my income taxes.
 - e. Delta Air Lines anticipated cash severance: Pursuant to the Delta Air Lines, Inc. Officer and Director Severance Plan, I am entitled to receive a severance payment calculated according to a formula, payment of 15 months of COBRA expenses, and the Management Incentive Plan payment for my work in January 2018. Under the Long Term Incentive Plan, I am entitled to receive a pro rata share of my cash performance award granted in 2016 and 2017.
 - f. Delta Air Lines career transition services: Pursuant to the Delta Air Lines, Inc. Officer and Director Severance Plan, I am eligible to receive career transition

services valued at up to \$5,000 at a career transition services firm chosen and paid by Delta. The eligibility will expire upon my becoming employed.

- g. Delta Air Lines Management Incentive Plan: Under the Management Incentive Plan I will receive the 2017 payment.
- h. Delta Air Lines cash signing bonus: Delta has agreed to waive the contractual requirement that I repay 50 percent of my cash signing bonus.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

During the last 10 years, I have represented clients in matters affecting the administration and execution of the antitrust and consumer protection laws and on related issues of public policy.

I worked with a pharmaceutical client on draft legislation pertaining to the circumstances under which generic pharmaceutical manufacturers could obtain access to samples of branded pharmaceutical products subject to Risk Evaluation and Mitigation Strategies (REMS) and/or restricted distribution systems.

I worked with an airline client on draft legislation pertaining to operational issues.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

N/A

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

If confirmed, I would work diligently with my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

If confirmed, I would work diligently with my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

ATTACHMENT A

RÉSUMÉ OF CHRISTINE S. WILSON

Education

- Georgetown University Law Center (J.D., *cum laude*, 1995)
- University of Florida (B.A., 1991; Phi Beta Kappa)

Experience

- Senior Vice President—Legal, Regulatory & International, Delta Air Lines (2016–2/1/2018)
- Partner—Antitrust Group, Kirkland & Ellis LLP (2011–2016)
- Partner—Antitrust Group, O'Melveny & Myers LLP (2004–2011)
- Consultant—Howrey, Simon, Arnold & White, LLP (2004)
- Consultant—Chairman Timothy J. Muris, Federal Trade Commission (2003–2004)
- Chief of Staff—Chairman Timothy J. Muris, Federal Trade Commission (2001–2002)
- Senior Associate—Howrey, Simon, Arnold & White, LLP (2000–2001)
- Associate—Collier, Shannon, Rill & Scott, PLLC (1995–2000)
- Law Clerk—Bureau of Competition, Federal Trade Commission (1994)
- Research Assistant—Prof. Steven Salop, Georgetown University Law Center (1993–1994)

Admissions

- District of Columbia (admitted 1999)
- Commonwealth of Virginia (admitted 1995) (inactive)

Current Memberships and Affiliations

- Editor, Antitrust Law Developments Update, Antitrust Section, American Bar Association (2017–2018)
- Co-Founder—The Grapevine (DC Women's Network of Competition and Consumer Protection Professionals)
- Member—American Bar Association, Antitrust Section
- Member—District of Columbia Bar Association, Antitrust, Trade Regulation and Consumer Affairs Section

Former Memberships and Affiliations

- Member—Research Institute, Antitrust Section, American Bar Association Advisor to the U.S. Government in connection with International Competition Network
- Member—Competition Committee, U.S. Council for International Business
- Member—Competition Committee, Business and Industry Advisory Council (BIAC) to the Organization for Economic Cooperation and Development (OECD)
- Member—Task Force on Foreign Investment, Trade Policy, and Sectoral Review, Antitrust Section, American Bar Association
- Vice Chair—Transportation and Energy Committee, Antitrust Section, American Bar Association
- Vice Chair—Federal Civil Enforcement Committee, Antitrust Section, American Bar Association
- Special Assistant to James F. Rill, Co-Chair of the International Competition Policy Advisory Committee (Commissioned by U.S. Attorney General Janet Reno)

Publications

- Kirkland Alert, *Federal Trade Commission Loses Motion to Enjoin Steris-Synergy Merger Based on Lack of Evidence of Future Competition*, September 28, 2015 (with I. John, J. Mutchnik, and M. Kovner)
- Kirkland Alert, *FTC Issues Policy Statement on the Reach of Section 5 of the FTC Act*, August 17, 2015 (with T. Muris)
- Kirkland Alert, *Ninth Circuit Affirms FTC's Win in Challenge to Hospital's Acquisition of Physician Group; Voices Skepticism of Merger-Related Efficiency Claims*, February 17, 2015 (with I. John and I. Conner)
- Kirkland Alert, *DOJ Requires Disgorgement for Gun-Jumping Violations in Abandoned Flakeboard/SierraPine Transaction*, November 12, 2014 (with I. John, J. Mutchnik, M. Kovner, and J. Nord)
- *Bazaarvoice: Protecting Consumers by Silencing the Customer?*, COMPETITION POLICY INT'L (2014) (with T. Muris)
- *Yes We Can, But Should We? Merger Remedies During the First Obama Administration*, COMPETITION POLICY INT'L (2014) (with K. Klovors)
- *Antitrust Issues in the Air Transportation Industry*, in Am. Bar Ass'n, TRANSPORTATION ANTITRUST HANDBOOK (2014) (with I. Conner and J. Nord)
- Kirkland Alert, *DC District Court Upholds New HSR Rules Expanding Reporting Requirements for Pharmaceutical Patent Licenses*, June 11, 2014 (with E. Jakovic, J. Mutchnik, and B. Sayyed)
- Kirkland Alert, *Senate Confirms Terrell McSweeney as a Federal Trade Commissioner*, April 14, 2014 (with S. Davies and T. Muris)
- Kirkland Alert, *The DOJ Settles Airline Challenge, Clears Path/or AMR/US Airways Merger*, November 14, 2013 (with I. Conner and T. Muris)
- Kirkland Alert, *FTC Finalizes Amendments to HSR Act to Expand Reporting Requirements for Pharmaceutical Patent Licenses*, November 13, 2013 (with E. Jakovic, J. Mutchnik, and B. Sayyed)
- Kirkland Alert, *Senate Confirms Bill Baer to Lead the Antitrust Division and Josh Wright as a Federal Trade Commissioner*, January 2, 2013 (with T. Muris and B. Sayyed)
- *Grading the Professor: Evaluating Bill Kovacic's Contributions to Antitrust Engineering*, in I WILLIAM E. KOVACIC: AN ANTITRUST TRIBUTE LIBER AMICORUM (Nicholas Charbit *et al.*, eds., 2012) (with D. Sokol and J. Nord)
- Kirkland Alert, *FTC Challenges Magnesium Elektron's 5-Year-Old Non-Reportable Acquisition of Rev.ere Graphics*, October 17, 2012 (with I. Conner and J. Nord)
- Kirkland Alert, *Senate Judiciary Committee Holds Hearing on William Baer's Nomination to Head the U.S. Department of Justice's Antitrust Division*, July 27, 2012 (with S. Davies)
- KirklandPEN, *Antitrust Trends in the United States, China and India, in What to Expect in 2012: From Carried Interest Taxation to Chinese Antitrust Enforcement*, January 9, 2012 (with I. Conner, E. Jakovic, M. Kovner, T. Muris, J. Mutchnik, and B. Sayyed)

- Conflict, Convergence, and Cooperation; in Am. Bar Ass'n, *MONOPOLIZATION AND DOMINANCE HANDBOOK* (2011) (with B. Sayyed)
- Kirkland M&A Update, *Forward Looking Statements—Deal Market Trends for 2012*, December 6, 2011 (with D. Fox, D. Wolf, R. Hayward, D. Feirstein, J. Zachariah, and T. Muris)
- Kirkland M&A Update, *Behind the Headlines—A Closer Look at Antitrust Reverse Termination Fees*, September 7, 2011 (with D. Wolf and T. Muris)
- Kirkland Alert, *Trend Toward Transnational Cooperation in Antitrust Enforcement Continues with Sino-U.S. Cooperation Agreement*, August 1, 2011 (with M. Filip, T. Muris, J. Mutchnik, and S. Williamson)
- Kirkland Alert, *India Finalizes Merger Control Regulations*, June 3, 2011 (with E. Jakovic and A. Nielson)
- Developments in International Cartel Enforcement and Leniency Agreements, in *GLOBAL COMPETITION REV.*, *ANTITRUST REVIEW OF THE AMERICAS* 2010 (2009)
- *Bell Atlantic Corp. v. Twombly*: A Tectonic Shift in Pleading Standards (Or Just a Tremor)?, *WASH. LEGAL FOUND. LEGAL BACKGROUNDER*, Aug. 24, 2007 (with T. Brown)
- The Learned Professions in the United States: Where Do We Stand Thirty Years After *Goldfarb*?, in *EUROPEAN COMPETITION LAW ANNUAL* 2004 (Claus-Dieter Ehlermann & Isabela Atanasiu eds., June 2006) (with M. Schechter)
- Selected Recommendations for Substantive and Procedural Convergence in the Multi-Jurisdictional Merger Context, in *INTERNATIONAL ANTITRUST LAW & POLICY* (Barry Hawk ed., 2000) (with J. Rill)
- Streamlining Multi-Jurisdiction Merger Review, *GLOBAL COMPETITION REV.*, April/May 2000, at 18 (with C. Lewis)
- Market Access chapter, in *FINAL REPORT OF THE AMERICAN BAR ASSOCIATION GLOBAL TASK FORCE* (1999) (contributor)
- Markets in the Balance: Efficiencies Analysis of Mergers Should Consider Multiple Markets, *LEGAL TIMES*, Oct. 25, 1999, at 34
- Trends in U.S. Antitrust Enforcement, in *GUIDE TO THE WORLD'S LEADING COMPETITION AND ANTITRUST LAWYERS* (1999) (with J. Rill)
- American Bar Association Comments on the 1998 U.S./ECU Positive Comity Agreement (1998) (contributor)
- Global Forum chapter, in *Report of the INTERNATIONAL CHAMBER OF COMMERCE JOINT WORKING PARTY ON COMPETITION AND INTERNATIONAL TRADE* (1998) (contributor)
- Antitrust Enforcement and Non-Enforcement as a Barrier to Import in the Japanese Automobile Industry, 24 *EMPIRICA* 109 (1997) (with J. Rill)
- The New Efficiencies Guidelines, *FTC WATCH*, Apr. 21, 1997, at 8 (with J. Loftis III)
- Federalism in Antitrust Enforcement, in *ROBERT SCHUMAN CENTRE ANNUAL ON EUROPEAN COMPETITION LAW* (Claus-Dieter Ehlermann & Laraine L. Laudati eds., 1996) (with J. Rill)

Speaking Engagements and Presentations

- “Hot Topics in Mergers and Acquisitions 2015,” *PLI*, Chicago (September 2015) and New York (Oct. 2015)
- “Antitrust Issues in the Internet Age,” *ABA Business Law Section Annual Meeting*, Chicago (Sept. 2015)
- “Waiting to Exhale: Interim Operations and Gun Jumping,” *ABA Antitrust Section Spring Meeting*, Washington, D.C. (Mar. 27, 2014)
- “Airline Mergers: First Class Results or Middle Seat Misery?,” *ABA Antitrust Section*, Washington, D.C. (May 28, 2013)
- “Competitor Collaborations: U.S. and EU Joint Venture Law,” *ABA Antitrust Section Spring Meeting*, Washington, D.C. (Apr. 10, 2013)
- “Antitrust in the Second Obama Term: What to Expect?,” *George Washington University Law School and Concurrences Journal*, New York (Mar. 27, 2013)
- “Antitrust Hot Topics,” *Organization for International Investment General Counsel Conference*, Washington, D.C. (Sept. 2012)
- “Someone to Watch Over Me: Legal & Compliance Challenges Posed By Antitrust Agencies’ Consent Decrees,” *Washington Legal Foundation*, Washington, D.C. (July 28, 2011)

- “Competition Analysis in the Airline Industry,” ABA Public Utility, Communications and Transportation Law Conference, Washington, D.C. (Mar. 7, 2011)
- “Toward Greater Transparency or Enhanced Market Power: Distribution Issues in the Airline Industry,” ABA Antitrust Section Transportation and Energy Committee, Washington, D.C. (Feb. 8, 2011)
- “Mergers & Acquisitions: Issues and Challenges,” International Competition Law Conference, Delhi (Oct. 19, 2010)
- “Antitrust Enforcement Investigations: Recent Changes Around the Region,” Inter Pacific Bar Association 20th Annual Conference, Singapore (May 4, 2010)
- “Vertical Restraints, Resale Price Maintenance, and Article 81(1) Analysis,” Fordham Conference on International Antitrust Law and Policy, New York (Sept. 25, 2009)
- “The FTC’s Review of its Privacy Mission: How Will It Affect Behavioral Advertising and Other Marketing Practices?,” Washington, D.C. (Sept. 22, 2009)
- “The FTC’s Proposed Rulemakings Addressing Mortgage Industry Practices,” Washington, D.C. (June 3, 2009)
- “Mergers and Alliances in the Airline Industry,” ABA Antitrust Section Merger and Transportation Committees, Washington, D.C. (Feb. 18, 2009)
- “Divergent Attitudes Toward the IP/Antitrust Interface in the EU and the U.S.,” ABA Antitrust Section Antitrust/IP Conference, Berkeley (Feb. 5, 2009)
- “Antitrust and Intellectual Property in China,” American Intellectual Property Law Association Spring Meeting, Houston (May 14, 2008)
- “The International Competition Network: Report from the Unilateral Conduct Working Group,” ABA Antitrust Section Sherman Act Section 2 and International Committees, Washington, D.C. (Mar. 19, 2007)
- “Price Gouging: Do We Need a New Federal Law?,” ABA Antitrust Section Spring Meeting, Washington, D.C. (Mar. 30, 2006)
- Panelist, “Update on Antitrust Law Developments,” Presentation Before the ABA Antitrust Section Corporate Counseling Committee (Sept. 22, 2006)
- Moderator, “Brown Bag” Luncheon with FTC Commission William Kovacic, ABA Antitrust Section Federal Civil Enforcement Committee (July 18, 2006)
- Presenter on Behalf of the Business and Industry Advisory Committee, OECD Working Party 2 Roundtable on Competition in the Payment Cards Industry (June 6, 2006)

The CHAIRMAN. Thank you, Ms. Wilson.

Next up, Mr. Phillips. And it will be the Senate’s loss and the FTC’s gain, but welcome. Please proceed.

STATEMENT OF NOAH JOSHUA PHILLIPS, NOMINEE TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION

Mr. PHILLIPS. Thank you. Chairman Thune, Ranking Member Blumenthal, members of the Committee, I want to thank you for holding this hearing and for the opportunity to testify before you today. This is a critical time for the Federal Trade Commission, and your stewardship of that agency is essential.

I also want to thank the President for the honor that he has bestowed and the confidence that he has placed in me. I am deeply humbled by that.

I would like to thank Senator Cornyn. It has been the honor of my life to spend the last 6 years working for him.

With the Committee’s permission, I will reintroduce my family, and I thank you in advance for your patience with some of them. First, my father, David Phillips, is a law professor at Northeastern University in Boston. I did not go there, but he taught me everything. What is perhaps more important, I was 10 years old when my mother died of cancer, and my father raised me and my two

sisters all by himself. I know that my mother, Deborah Kaplan Phillips, is here with us today in spirit.

My younger sister, Judith, is here. She and her family live in Cambridge, Massachusetts, and she works as an attorney at a startup devoted to improving patient care.

My older sister, Aliza, is not able to be here. She is a clinical psychologist and instructor at Harvard Medical School, and has three great kids of her own. I'm thrilled to have her husband, Ira, a journalist and author, here with me today.

Here with me are my three children: Dalia, Jonah, and our baby, Abigail. I could go on about them indefinitely, but for present purposes, I will say that Dalia is beginning to learn the game *Monopoly*, and that Jonah shares this Committee's interest in airplanes and trains.

[Laughter.]

Mr. PHILLIPS. Finally, my wife and love, Sarah, is here with me. She is a committed public servant, recently off a four-year detail to the White House on the staff of the National Security Council. Between her work in government and out, it is no exaggeration to say that Sarah is personally responsible for saving tens of thousands of lives. I am in awe as well as love. Happy Valentine's Day.

Members of the Committee, the FTC is an important institution at a critical time for our national economy. Congress has tasked the Commission with enforcing consumer protection laws and anti-trust laws, which, in turn, help consumers by protecting competition. The free market is the most powerful and effective engine of social progress in human history, but it works better with rules of the road and cops to enforce them. The FTC is one of those cops. Its mission statement reads, "Working to protect consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice, and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity."

I believe in that mission. By following it, the FTC not only protects consumers, it helps instill confidence in markets, foster innovation, and create jobs, and that is no small task. First, the FTC must execute the authority vested in it by Congress to protect consumers and competition. Second, the FTC must maintain predictability and intellectual rigor. We need sound rules on which consumers and businesses both can rely. Third, the FTC must keep abreast of developments in technology and business. And the agency must do all of this as Americans are hearing more about anti-trust, seeing high health care costs, and sharing their data for use in new and different ways. I am here before you because, if confirmed, I want to help lead the FTC at this critical time.

Over my career, I have worked on issues the FTC deals with from different perspectives: as a mergers and acquisitions analyst; as a lawyer litigating antitrust, fraud, and other cases, and doing merger review; and for the bulk of my legal career, here in the U.S. Senate. And that last perspective is key.

As the members of this Committee well know, legislation is hard. It requires understanding complex problems, listening to a broad array of stakeholders, judgment, and finding common bipartisan ground. For over 6 years, I have worked hard and well with Demo-

crats and Republicans, and, if confirmed, I will continue that at the FTC.

Working here in the Senate also has given me a personal appreciation for the Constitution's separation of powers, including the primacy of Congress in fashioning national policy. I know what goes into the words you write, and, if confirmed, I will take care faithfully to execute them.

I thank the members of this Committee. And I look forward to your questions.

[The prepared statement and biographical information of Mr. Phillips follow:]

PREPARED STATEMENT OF NOAH JOSHUA PHILLIPS, NOMINEE TO BE A COMMISSIONER,
FEDERAL TRADE COMMISSION

Chairman Thune, Ranking Member Nelson, members of the Committee—I want to thank you for holding this hearing, and for the opportunity to appear before you.

This is a critical time for the Federal Trade Commission, and your stewardship is essential.

I want to thank the President, for the honor he has bestowed and the confidence he has placed in me. I am deeply humbled.

I'd also like to thank Senator Cornyn. It's been the honor of my life to spend the last six years working for him, on behalf of Texans and the American public.

With the permission of the Committee, I'd like to recognize my family here with me today: my father, David Phillips; my sister, Judith Dolgin, my brother-in-law, Ira Stoll; my children, Dalia, Jonah, and Abigail; and my wife, Sarah Charles.

Members of the Committee, the FTC is an important institution at a critical time for our national economy.

Congress has tasked the FTC with enforcing consumer protection laws and anti-trust laws, which help consumers by protecting competition.

The free market is the most powerful and effective engine of social progress in human history.

But it works better with rules of the road, and cops to enforce them. The FTC is one of those cops.

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I believe in that mission.

By following it, the FTC not only protects consumers, it helps instill confidence in markets, foster innovation and create jobs.

That is no small task.

First, the FTC must execute faithfully the authority vested in it by Congress, to protect consumers and competition. If confirmed, that is a responsibility I will shoulder humbly and carefully.

Second, the FTC must maintain predictability and intellectual rigor. We need sound rules, on which consumers and businesses both can rely.

Third, the FTC must keep abreast of developments in technology and business.

The agency must do all this as, among other things, Americans are hearing more about antitrust, seeing high healthcare costs, and sharing their data for use in new and different ways.

I am here before you because I want to help lead the FTC at this critical time.

Over my career, I have worked on issues the FTC deals with from different perspectives: as a mergers & acquisitions analyst; as a lawyer litigating antitrust and fraud cases, and doing merger review; and, for the bulk of my legal career, here in the Senate.

That last perspective is key.

As the members of this Committee know, legislation is hard. It requires understanding complex problems, listening to a broad array of stakeholders, judgment and finding common, bipartisan, ground.

For over six years, I have worked hard and well, with Democrats and Republicans. I plan to continue that at the FTC.

Working here in the Senate also has given me a personal appreciation for the Constitution's separation of powers, including the primacy of Congress in fashioning national policy.

I know what goes into the words you write, and, if confirmed, I will take care faithfully to execute them.

I thank the Members of the Committee and look forward to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Noah Joshua Phillips.
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: January 25, 2018.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: Senate Judiciary Subcommittee on Border Security & Immigration, Dirksen Senate Office Building, Room 141, Washington, D.C., 20510.
5. Date and Place of Birth: August 3, 1978; Boston, Massachusetts.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
 Spouse: Sarah Pauline Charles, Senior Director, International Rescue Committee.
7. List all college and graduate degrees. Provide year and school attended.
 A.B., Dartmouth College, 2000
 J.D., Stanford Law School, 2005
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
 - a. Wasserstein Perella & Co. (later Dresdner Kleinwort Wasserstein), New York, NY, 2000–2002. I worked as an Analyst investment banker in the firm’s Energy Group. At times, my work involved supervising more junior bankers, bankers at other firms, lawyers and other professionals involved in mergers and acquisitions work. M&A work necessarily involves study of the relevant markets in proposed deals. I focused on the energy industry, which is traditionally within the purview of the Federal Trade Commission.
 - b. Hon. Edward C. Prado, U.S. Court of Appeals for the Fifth Circuit, San Antonio, TX, 2005–2006. I worked as a law clerk, which exposed me to a wide variety of areas of Federal law and appellate litigation practice.
 - c. Cravath, Swaine & Moore LLP, New York, NY, 2006–2010. I worked as an associate attorney in the firm’s litigation group. I worked on fraud and antitrust matters, among others, including one significant merger review before the Department of Justice. I supervised teams of junior attorneys, accountants and support staff on a variety of matters, including litigation and internal investigations.
 - d. Steptoe & Johnson LLP, Washington, D.C., 2010–2011. I worked as an associate attorney in the firm’s litigation group. I worked on consumer protection, fraud and antitrust matters, including one involving patents. I was the lead associate on two larger litigations, one of which involved working with one partner to lead a team of lawyers and support staff through a successful trial.
 - e. Senate Judiciary Committee, Subcommittees on Immigration, Refugees & Border Security, the Constitution, and Border Security & Immigration, Washington, D.C., 2011–present. As Counsel, from 2011 to 2013, I advised Senator Cornyn on policy issues within the Committee’s purview, including antitrust, consumer privacy, constitutional law, fraud and intellectual property. I worked on legislation and oversight related to these issues. Since 2013, as Chief Counsel to Senator Cornyn, I have continued to advise him on these issues and led a team of lawyers and others.
9. Attach a copy of your résumé.
 A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years. None.
11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

From 2012 to 2016, I served on the Board of Directors of the Senate Employee Child Care Center. I served both as Secretary and Vice President.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, D.C. Minyan approximately 2012–2016; Member, Ohr Kodesh Congregation, 2016–present. Both of these are Jewish congregations, but to my knowledge they do not restrict membership on the basis of religion.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period. None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

- a. Honorary Texan, 2017.
- b. National Law Journal's "Hill Hot List," 2014.
- c. Commendation for excellence in trial advocacy by the City of Lancaster, California, 2011.
- d. Mr. and Mrs. Duncan L. Matteson Sr. Award and Walter J. Cummings Awards in Stanford Law School's 2005 Marion Rice Kirkwood Moot Court Competition. My partner and I were the champions and I won Best Individual Oral Argument.
- e. Various academic awards.

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

- a. Panel participant, "Legislative Perspectives—Agenda for Congress and the New Administration," 2016 IP Institute, Cravath, Swaine & Moore LLP, November 30, 2016.
- b. Panel participant, "Balancing Patent Rights and Litigation Abuses," The Federalist Society, December 4, 2014.
- c. Panel participant, "Effective Innovation Policies to Bolster Entrepreneurs & Enable New Markets," Consumer Electronic Association's Startup Government Day, May 16, 2014.
- d. Speech at American Enterprise Institute's "Preventing patent abuse: Prospects for Reform" event, April 3, 2014. I delivered remarks that Senator Cornyn had planned to deliver.
- e. "Sunlight for the Heart of Darkness: Conflict Minerals and the First Wave of SEC Regulation of Social Issues," written by Jonathan C. Drimmer and myself and published in Human Rights and International Legal Discourse. Citation: 6 Hum. Rts. & Int'l Legal Discourse 131 2012.
- f. I wrote a blog post (I believe titled "Imagining Conservatism") on a website, Snarksmith.com, in 2005 or 2006. I do not recall the substance and have been unable to find the article online.
- g. Letters to the Editor of The Dartmouth, Dartmouth College's campus daily:
 - i. "Atonal," April 27, 2001.
 - ii. "False Racism Accusation is an Attempt to Discredit," November 4, 1999.
 - iii. "Student Assembly Does Its Best To Represent Diverse Dartmouth Student Body," February 24, 1999.
 - iv. "Collis Cafe Must Stay Vegetarian to Fairly Serve Dartmouth Students," January 28, 1997.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

Several aspects of my professional background qualify me for appointment to the FTC. As Chief Counsel and, earlier, Counsel to Senator Cornyn, I have advised him on a number of subject matters that fall within the FTC's jurisdiction, notably antitrust, consumer protection, fraud, intellectual property and privacy. I have also advised him on oversight of both the agency and the Department of Justice's Antitrust Division, when those issues have come before the Senate Judiciary Committee. As an attorney in private practice, I worked on those areas (including merger review), as well as on other litigation issues related to mergers and acquisitions. My career began in mergers and acquisitions, advising firms on transactions in the energy industry.

The FTC's antitrust, consumer protection and public education missions are as important to the American economy as ever. Technology and business practices are evolving rapidly, public discussion about antitrust is growing louder and Americans are grappling with increasing healthcare costs and new realities of data privacy. I want to help lead the FTC to face these challenges in order to protect American consumers. My nearly two decades of experience—in public and private service, as an adviser to policy makers and businesses alike—will enable me to do so.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency proper management and accounting controls, and what experience do you have in managing a large organization?

Management of the FTC is vested principally in the Chairman. As Commissioner, I would work with the Chairman, the other Commissioners and agency senior staff to ensure proper management and accounting controls. I have never run a large organization. As a Commissioner, I would leverage the managerial experience I gained in my professional career as a lawyer in private practice, a congressional staffer, and a non-profit board member.

20. What do you believe to be the top three challenges facing the department/agency, and why?

In my view, the agency's top three challenges are: (i) protecting the American consumer by enforcing the antitrust and consumer protection laws written by Congress; (ii) maintaining predictability and intellectual rigor in the interpretation and enforcement of those laws; and (iii) keeping abreast of developments in technology and business practices to ensure the protection of American consumers.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I have none.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

None, other than my work as a congressional staffer.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain.

Yes. In 1997, my sophomore year in college, my roommates and I threw a party at which alcohol was served. My roommates and I were not yet 21, and the Hanover Police Department (HPD) shut down the party following a complaint. I was arrested for the unlawful possession of alcohol. The charges were dropped following my participation in the HPD's Alcohol Diversion Program.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.

See answer to question C2, above.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

I have no additional information to disclose.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

If confirmed, I would work diligently with my fellow Commissioners to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?

If confirmed, I would work diligently with my fellow Commissioners to do so.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RÉSUMÉ OF NOAH JOSHUA PHILLIPS

Professional Experience

U.S. Senate Committee on the Judiciary, Washington, D.C., Subcommittees on the Constitution and the Border Security and Immigration
Chief Counsel to Senator John Cornyn, Republican Whip, 2013–present, *Counsel*, 2011–2013

- Advise Senator Cornyn on Judiciary Committee matters during committee and floor consideration, including antitrust, bankruptcy, civil justice, constitutional law, intellectual property, privacy and national security.

- Represent Senator Cornyn on Judiciary Committee issues to House and Senate Republican committee and floor leadership, as well as outside stakeholder groups.
- Draft and shepherd legislation on topics including intellectual property, bankruptcy and national security.
- Featured on the National Law Journal's 2014 "Hill Hot List" of congressional staff lawyers.

Stephoe & Johnson LLP, Washington, D.C.
Litigation Associate, 2010–2011

- Drafted briefs for Federal and state litigation on issues including Federal preemption, antitrust, and patent law.
- Lead associate in representation of hedge fund client in multi-hundred million dollar FINRA arbitration; and individual directors in securities, derivative and ERISA lawsuits stemming from environmental disaster.

Cravath, Swaine & Moore LLP, New York, NY
Litigation Associate, 2006–2010

- Practiced civil litigation before Federal and state courts and agencies involving Alien Tort Statute, antitrust, contracts, copyright, patents, professional malpractice, Rule 11 sanctions, securities fraud and takeover disputes and provided advice to clients on mergers, litigation strategy and related matters.
- Conducted internal investigations of client companies involving employee misconduct and political corruption.

U.S. Court of Appeals for the Fifth Circuit, The Honorable Edward C. Prado, San Antonio, TX
Law Clerk, 2005–2006

Wasserstein Perella & Co. (later Dresdner Kleinwort Wasserstein), New York, NY
Analyst, Mergers & Acquisitions, 2000–2002

Education

Stanford Law School, Palo Alto, CA
 J.D., May 2005

Selected Honors/Activities: Co-Champion, 2005 Marion Rice Kirkwood Moot Court Competition (Mr. and Mrs. Duncan L. Matteson Sr. Award for Winning Team and Walter J. Cummings Award for Best Individual Oral Argument).

Dartmouth College, Hanover, NH
 A.B. in Government with Honors, *Magna Cum Laude*, June 2000

Selected Honors/Activities: Phi Beta Kappa; William S. Churchill Memorial; Class President (1997–1998); White House Intern in the Office of Counsel to the President (Winter 1999).

Bar Admissions

New York (2006); District of Columbia (2010); U.S. Court of Appeals for the Second Circuit (2007); U.S. Court of Appeals for the Ninth Circuit (2010); U.S. District Courts for the Southern and Eastern Districts of New York (2006).

The CHAIRMAN. Thank you, Mr. Phillips.
 Mr. Chopra.

STATEMENT OF ROHIT CHOPRA, NOMINEE TO BE A COMMISSIONER, FEDERAL TRADE COMMISSION

Mr. CHOPRA. Thank you, Chairman Thune and Ranking Member Blumenthal and members of the Committee. I appreciate the opportunity to be here today.

It's an honor to be nominated by the President to the Federal Trade Commission, an agency with one of the most respected staffs in the world. And I'm grateful to my family, friends, teachers, and colleagues for their support, some of whom are here today.

This is my fifth time testifying in hearings before Members at the U.S. Senate. I believe in the fundamental importance of con-

gressional oversight over Federal agencies to ensure that they're working for the greater good and using public resources efficiently. And I am committed to being responsive and accountable to this Committee and this chamber.

The FTC is more than a century old, but many of its traditions should remain timeless. The agency has a longstanding history of Commissioners working on a bipartisan basis to protect consumers and competition by fairly enforcing the law. And it has been a privilege for me to get to know Noah Phillips, Christine Wilson, and Joe Simons.

The agency also knows that law enforcement proceedings should not be the only tool in the toolbox. Research, consumer and business education, and cooperation with other agencies can be powerful tools, and I'm eager to continue these traditions along with my fellow Commissioners for the benefit of consumers and businesses alike.

At the same time, the FTC faces significant challenges in today's day and age. The massive data breaches at Equifax and other companies highlight the serious issues we face with the security and proliferation of consumer data in our economy and society. Consumers, including senior citizens and military families, continue to be targeted by scammers and fraudsters. And record-high equity market valuations, the outlook for global growth, and the shape of the yield curve suggest to me that sizable M&A activity will occur in 2018 and perhaps beyond. At the same time, small business starts are hovering near a 40-year low. All of these trends will require careful attention of the Commission.

In the private sector, I've seen how both large and small enterprises seek to serve consumers while responding to the demands and pressures of a competitive environment for capital, labor, and other input markets. In my previous service in government, I was proud to lead and contribute to work that benefited both consumers and honest businesses, shutting down debt relief scams, securing hundreds of millions of dollars in refunds for borrowers harmed by illegal practices, and promoting greater competition in the student loan refinance market.

If confirmed, I look forward to working cooperatively with my fellow Commissioners, the staff, this Committee, and the public at large to advance the agency's mission to protect consumers and competition with openness, transparency, and humility.

Thank you. And I look forward to your questions.

[The prepared statement and biographical information of Mr. Chopra follow:]

PREPARED STATEMENT OF ROHIT CHOPRA, NOMINEE TO BE A COMMISSIONER,
FEDERAL TRADE COMMISSION

Chairman Thune, Ranking Member Nelson, and Members of the Committee, thank you for holding this hearing today to consider Joseph Simons, Christine Wilson, Noah Phillips, and me to serve as Commissioners of the Federal Trade Commission.

It has been a great honor to be nominated by the President to a position that plays such a critical role in promoting an economic environment that works for hardworking and honest businesses and consumers. I am indebted to my family, friends, teachers, and colleagues who have led me to sit before you today, as well as to many current and former Commissioners who have provided valuable advice.

This is my fifth time testifying in hearings before Members of the United States Senate, the majority of these taking place during my previous government service. I deeply believe in the fundamental importance of Congressional oversight over Federal agencies to ensure that they are working in the interest of taxpayers and the public, and I committed to being responsive and accountable to this Committee.

The Federal Trade Commission is among the most highly-respected agencies in the Federal Government. Not only does the agency have a strong tradition of bipartisanship, but it also does not limit its work to adversarial law enforcement proceedings. Using research, consumer and business education, and cooperation with other agencies, I am eager to continue this tradition for the benefit of consumers and businesses alike.

At the same time, the Federal Trade Commission faces significant challenges. Consumers, including senior citizens and military families, continue to be targeted by scammers and fraudsters, especially online. The massive data breach at Equifax highlighted the serious issues we face with the security of the proliferation of consumer data in our economy and society. Record-high equity market valuations, the outlook for global growth, and the shape of the yield curve suggest sizable M&A activity in 2018, and perhaps beyond. All of these trends will require resources and careful attention of the Commission, underscoring the importance of responsible stewardship of the agency's finite resources.

I hope my experience in the private sector working with both large and small enterprises on how to serve consumers while responding to the demands and pressures of a competitive capital markets environment, coupled with my experience as a government official, will prove to be an asset to the Federal Trade Commission and its mission.

During my tenure at the Consumer Financial Protection Bureau and the U.S. Department of Education, I was proud to lead and contribute to work that created significant benefits for consumers and legitimate businesses alike. Working with a bipartisan group of Attorneys General, my colleagues and I worked to shut down a deceptive website masquerading as an official government entity that targeted student veterans. I led efforts to obtain hundreds of millions of dollars in refunds for consumers harmed by illegally-originated student loans and improper debt collection tactics.

But importantly, I know that agencies can achieve benefits for the market outside of formal enforcement proceedings through research and engagement with industry and the public. I've worked with industry innovators to remove perceived regulatory barriers in private-sector loan refinancing, helping to contribute to a robust market that is creating competition and cutting interest rates for consumers across the country. I helped develop a new Financial Aid Shopping Sheet that has been voluntarily adopted by thousands of colleges across the country to better educate students and their families on how to make better decisions on financing their higher education. I co-authored a report uncovering harmful practices that led to the overcharging of tens of thousands of military families—practices which have largely ceased to exist.

If confirmed, I look forward to working cooperatively with my fellow Commissioners, the Commission's staff, this Committee, and the public to advance the agency's mission to protect consumers and competition with openness, transparency, and humility.

Thank you for your consideration.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Rohit Chopra.
2. Position to which nominated: Commissioner, Federal Trade Commission.
3. Date of Nomination: January 25, 2018.
4. Address (List current place of residence and office addresses):
 Residence: Information not released to the public.
 Office: 1620 Eye St. #200, Washington, D.C. 20006
5. Date and Place of Birth: January 30, 1982; Plainfield, NJ.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage). None.
7. List all college and graduate degrees. Provide year and school attended.
 Harvard University, BA, 2004.
 Wharton School, University of Pennsylvania, MBA, 2009.

8. List all post-undergraduate employment, and highlight all management-level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

Consumer Federation of America, 2017⁽¹⁾
 Clinton-Kaine Transition Project, 2016⁽¹⁾
 U.S. Department of Education, 2016⁽¹⁾⁽²⁾
 Consumer Financial Protection Bureau, 2010–2015⁽¹⁾⁽²⁾
 McKinsey & Company, 2008–2010⁽¹⁾
 U.S. Fulbright Fellow, 2006–2007
 PSB Research, 2006⁽¹⁾
 Booz, Allen & Hamilton, 2004–2006⁽¹⁾
 John Kerry for President, 2004
 Let's Go Publications, 2004

⁽¹⁾ Position held included responsibilities and content areas related to the position

⁽²⁾ Position held included significant enterprise-level or segment-level management responsibilities

9. Attach a copy of your résumé. See attachment.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last ten years.

Consultant, Colorado Office of the Attorney General, 2017.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last ten years.

Fellowship, Roosevelt Institute, 2017
 Consultant, Ford Foundation, 2017
 Consultant, GLG (intermittent)
 Fellowship, Center for American Progress, 2015 (unpaid)
 Graduate Teaching Assistant, University of Pennsylvania, 2008–2009
 Consultant, Prosper Marketplace, 2008

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Harvard Alumni Association
 Member, Board of Directors, 2011–2014

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period. None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Fels Institute of Government Public Leadership Award, 2016
 Woodstock Institute Community Investment Award, 2015
 Henry Morgenthau Prize, 2009
 U.S. Fulbright Fellowship, 2006

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Note: During my government service, I gave a large number of speeches and presentations at conferences, mostly at industry conferences in my official capacity. I also published many reports and blog posts for consumers. Records of these have been retained by the respective agencies where I served. I have attempted to list as many as I can recall.

Reports

Annual Report to Congress of the CFPB Student Loan Ombudsman
Consumer Financial Protection Bureau
October 2014

Annual Report to Congress of the CFPB Student Loan Ombudsman
Consumer Financial Protection Bureau
October 2013

Student Loan Affordability
Consumer Financial Protection Bureau
May 2013

Annual Report to Congress of the CFPB Student Loan Ombudsman
Consumer Financial Protection Bureau
October 2012

The Next Front? Student Loan Servicing and the Cost to Our Men and Women in Uniform (with Holly Petraeus)
Consumer Financial Protection Bureau
October 2012

Farewell to Cheap Capital? The Implications of Long-Term Shifts in Global Investment and Saving (with Manyika, et al)
McKinsey Global Institute
Fall 2010

Growth and Competitiveness in the United States: The Role of Its Multinational Companies (with Cummings, et al)
McKinsey Global Institute
Spring 2010

Columns, Op-Eds, and Blog Posts

Consumer Alert for Military Families on the Equifax Data Breach
Consumer Federation of America blog
September 2017

What Should I Do About the Massive Data Breach at Equifax?
Consumer Federation of America blog
September 2017

Sallie Mae's Stock Has Soared Since the Election
Washington Post
January 2017

5 Steps to Keep Student Loans from Ruining Your Life
Money
October 2015

Stressed Out by Student Debt
Milwaukee Journal-Sentinel
May 2015

Student Debt Drains Economy
Politico
May 2013

Debt Deja Vu for Students
Philadelphia Inquirer
October 2012

While serving as an official with the Consumer Financial Protection Bureau, I authored or co-authored dozens of blog posts and other written information for consumers. These posts can be found online by conducting an author search at https://www.consumerfinance.gov/about-us/blog/?form-id=l&filterl_authors=rohit-chopra

Speeches

Rutgers Law School Institute on Corporate Compliance
Remarks
April 2017
Camden, NJ

Transatlantic Consumer Dialogue
 Remarks
 March 2017
 Washington, D.C.
 Conference of Western Attorneys General
 Keynote Remarks
 May 2016
 Portland, OR
 National Association of Realtors
 Remarks
 May 2016
 Washington, D.C.
 University of Michigan
 Remarks
 January 2016
 Ann Arbor, MI
 Federal Reserve Bank of Philadelphia
 Remarks
 September 2015
 Philadelphia, PA
 State Higher Education Executive Officers Association
 Remarks
 August 2015
 Newport Beach, CA
 National Association of Student Financial Aid Administrators
 Remarks
 July 2015
 New Orleans, LA
 Woodstock Institute
 Remarks
 May 2015
 Chicago, IL
 Howard University
 Remarks
 April 2015
 Washington, D.C.
 Education Writers Association
 Remarks
 April 2015
 Chicago, IL
 Federal Reserve Bank of New York
 Remarks
 March 2015
 New York, NY
 National Council of Higher Education Resources
 Remarks
 February 2015
 Washington, D.C.
 American Bar Association
 Remarks
 February 2015
 Houston, TX
 National Council of Higher Education Resources
 Remarks
 February 2015
 Washington, D.C.
 Coalition of Higher Education Assistance Organizations
 Remarks
 January 2015
 Arlington, VA
 National Consumer Law Center
 Remarks
 November 2014
 Tampa, FL

National Association of Attorneys General
 Remarks
 May 2014
 Washington, D.C.
 Coalition of State University Aid Administrators
 Remarks
 April 2014
 Scottsdale, AZ
 Suffolk University Law School
 Remarks
 April 2014
 Boston, MA
 Consumer Bankers Association
 Remarks
 March 2014
 National Harbour, MD
 Coalition of Higher Education Assistance Organizations
 Remarks
 January 2014
 Arlington, VA
 Federal Reserve Bank of St. Louis
 Keynote Remarks
 November 2013
 St. Louis, MO
 National Council of Higher Education Resources
 Remarks
 November 2013
 St. Petersburg, FL
 National Consumer Law Center
 Remarks
 November 2013
 Washington, D.C.
 Credit Union National Association
 Remarks
 November 2013
 Phoenix, AZ
 ABS East
 Keynote Remarks
 October 2013
 Miami, FL
 New America Foundation
 Remarks
 October 2013
 Washington, D.C.
 National Association of Attorneys General
 Remarks
 May 2013
 Washington, D.C.
 iiBIG Education Finance and Loan Symposium
 Keynote Remarks
 May 2013
 Washington, D.C.
 Eastern Association of Student Financial Aid Administrators
 Remarks
 May 2013
 Boston, MA
 Milken Institute Global Conference
 Remarks
 April 2013
 Los Angeles, CA
 PDG Student Loan Receivables/Collections Conference
 Remarks
 April 2013
 Orlando, FL

Consumer Bankers Association
 Remarks
 March 2013
 Phoenix, AZ
 Education Writers Association
 Remarks
 November 2012
 Indianapolis, IN
 Judge Advocate General's (JAG) Legal Center and School
 Remarks
 October 2012
 Charlottesville, VA
 Department of Defense Worldwide Education Symposium
 Remarks
 July 2012
 Las Vegas, NV
 Coalition of Higher Education Assistance Organizations
 Remarks
 July 2012
 Cleveland, OH
 Transatlantic Consumer Dialogue
 Remarks
 June 2012
 Washington, D.C.
 National Association of Student Financial Aid Administrators
 Remarks
 March 2012
 Washington, D.C.
 Education Finance Council
 Remarks
 March 2012
 Washington, D.C.
 Association of Private Sector Colleges and Universities
 Remarks
 March 2012
 Washington, D.C.
 Consumer Federation of America Consumer Assembly
 Remarks
 March 2012
 Washington, D.C.
 Consumer Bankers Association
 Remarks
 March 2012
 Austin, TX
 National Council of Higher Education Loan Programs
 Remarks
 September 2011
 Washington, D.C.
 Student Loan Servicing Alliance
 Remarks
 June 2011
 Denver, CO

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

House of Representatives Committee on Financial Services
 Hearing Witness
 Subject Matter of Testimony: Consumer Protection for Students and Student Loan Borrowers
 April 28, 2017
 Senate Committee on Armed Services, Subcommittee on Personnel
 Written Statement on behalf of the Consumer Federation of America, the National Military Family Association, and other consumer/veterans advocates

Subject Matter of Testimony: Financial Readiness and Consumer Protection for Active-Duty Servicemembers and their Families
February 14, 2017
Joint Economic Committee of the United States Congress
Hearing Witness
Subject Matter of Testimony: Consumer Protections in Higher Education Finance
September 30, 2015
Senate Committee on the Budget
Hearing Witness
Subject Matter of Testimony: Impact of Student Debt on Homeownership, Entrepreneurship, and the Economy
June 4, 2014
Senate Committee on Banking, Housing, and Urban Affairs
Hearing Witness
Subject Matter of Testimony: Student Debt and Parallels to the Mortgage Crisis
June 24, 2013
Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Financial Institutions and Consumer Protection
Hearing Witness
Subject Matter of Testimony: Private Student Loans
July 24, 2012

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I am a deep believer in markets. When markets function well, they can deliver prosperity for families and enterprises in our country. But when a market participant engages in unfair or deceptive conduct, markets cannot function appropriately. Transparent, even-handed enforcement doesn't only serve the interests of consumers, it also helps honest businesses grow and succeed.

My work in the public sector as a Federal financial regulator, in the private sector working with companies to develop and execute new business strategies, and in the nonprofit sector working with a broad range of stakeholders on public policy issues has allowed me to analyze complex problems from multiple vantage points.

Should I be confirmed, I hope to steward the agency with my fellow Commissioners in a way that contributes to healthy and dynamic markets that are fair and competitive.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

The Commission is charged with setting agency priorities and carefully stewarding taxpayer resources in an effective and efficient manner. I believe that careful oversight of agency activities, particularly with respect to management and accounting controls, are critical.

My previous role as a senior government executive, as well as my private sector experiences with large enterprises, have equipped me with the skills to cooperate with and scrutinize the outputs of audits conducted by Inspectors General, the Government Accountability Office, and independent audit firms, in order to ensure that appropriate corrective actions are taken.

20. What do you believe to be the top three challenges facing the department/agency, and why?

First, the Commission must confront the rapid development and use of big data in today's modern economy. Output of data is doubling almost every two years. I have closely observed how big data is reshaping the financial services and education industries, but they are certainly not exceptions. Big data is offering new opportunities in almost every sector of the economy. At the same time, it raises important questions with respect to consumer protection, privacy, and competition that require thoughtful examination.

Second, while the Commission is more than a century old, it must be nimble and adjust to macroeconomic shifts both here and abroad. For example, in the near term, strong corporate earnings and balance sheets suggest that M&A activity is likely to be robust, despite expectations of rising interest rates. The macroeconomic environment has significant implications for the type of work the Commission can

expect to address in the upcoming years. The Commission must ensure that it has a clear view into the broader economic environment.

Third, I believe that all government agencies can and should continuously identify opportunities to make better use of taxpayer resources. Despite the significant responsibilities Congress has charged the Commission with executing, agency resources are, of course, limited. Stewarding the agency to meet its obligations to the public with these limited resources requires attention and care.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

If confirmed, I will resign from all outside positions.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the Federal Trade Commission's Designated Agency Ethics Official to identify potential conflicts of interest. If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As a Federal Government official at the U.S. Department of Education and Consumer Financial Protection Bureau, I was frequently solicited by Members of Congress and their staffs to provide substantive and technical advice on potential legislation. Outside of government, I have been called upon to express my views on consumer protection and higher education issues, though at no time have I ever served as a registered lobbyist.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

If confirmed, any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the Commission's Designated Agency Ethics Official. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics, professional misconduct, or retaliation by, or been the subject of a complaint to, any court, administrative agency, the Office of Special Counsel, professional association, disciplinary committee, or other professional group? If yes:

- a. Provide the name of agency, association, committee, or group;
- b. Provide the date the citation, disciplinary action, complaint, or personnel action was issued or initiated;
- c. Describe the citation, disciplinary action, complaint, or personnel action;
- d. Provide the results of the citation, disciplinary action, complaint, or personnel action.

No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business or nonprofit of which you are or were an officer ever been involved as a party in an administrative agency proceeding, criminal proceeding, or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

In November 2016, I was diagnosed with advanced thyroid cancer. I am blessed to have support from family, friends, colleagues, and neighbors, and I am grateful for the excellent medical care I receive.

My treatment is being supervised by Dr. Robert Tuttle of Memorial Sloan Kettering Cancer Center in New York. The treatment has included a major surgical intervention (total thyroidectomy) and post-operative iodine radiation treatment.

While I continue to undergo regular diagnostic monitoring and consultations with my medical team, my condition has not stopped me from leading a productive life. I have been assured by my medical team that I will be able to fully execute my professional responsibilities, if confirmed.

Should the Committee seek any additional information about my course of treatment or my fitness to serve, I have authorized my medical team to fully cooperate with these requests.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?

Yes. During my tenure as a Federal agency official, I have always sought to work cooperatively with all appropriate committees of jurisdiction to ensure that information requests from Majority and Minority staff receive appropriate and timely responses, and I will continue to do so.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee?

Yes. I will work closely with Members of the Commission and senior agency officials to ensure that the Committee is adequately briefed on key issues from appropriate experts employed by the Commission.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?

Yes. As a former Federal agency official, I have testified on numerous occasions before congressional committees. While testimony can be resource-intensive for agencies, hearings provide Congress, the market, and the public with greater confidence that agency activities are aligned with the public interest.

RÉSUMÉ OF ROHIT CHOPRA

Professional Experience

Consumer Federation of America, Senior Fellow (2017–Present)

- Conduct research and analysis on consumer issues with a special focus on young people and military families

Clinton-Kaine Transition Project, Policy Planning Adviser (2016)

- Pursuant to the Pre-Election Presidential Transition Act of 2010, supported policy and personnel planning in economic and regulatory policy areas

U.S. Department of Education, Special Adviser to the Secretary (2016)

- Led initiatives to enhance consumer protection, deploy more rational and efficient oversight, and improve transparency

Consumer Financial Protection Bureau, Assistant Director (2010–2015)

- Served as principal agency executive coordinating all activities on student financial services, including supervision, enforcement, consumer education, and research.
- Appointed by the Treasury Secretary in 2011 as student loan ombudsman, a new position established by Congress to work with consumers and industry on enhancing service
- Negotiated major resolutions to law enforcement actions leading to hundreds of millions of dollars in refunds for consumers. During tenure, CFPB uncovered military family overcharging scheme (resolved by Justice Department in \$60 million settlement with Sallie Mae), obtained \$480 million in relief on an illegal private student loan scheme, and shut down student “debt relief” companies
- Led initiatives to jumpstart competition and expand private-sector student loan refinancing opportunities
- Developed award-winning consumer education tools to assist borrowers seeking assistance on student loan borrowing and repayment, including a Financial Aid Shopping Sheet, voluntarily adopted by more than 2,000 colleges and universities

McKinsey & Company, Associate (2008–2010)

- Advised senior executive clients in the financial services and consumer technology industries as Summer Associate and full-time Associate in the U.S., Latin America, and Asia on operations, marketing, and acquisition strategies
- As a Fellow of the McKinsey Global Institute, co-authored two publications for the firm’s economics and public policy think tank

Additional experience includes work at a peer-to-peer financial technology startup, at private-sector consulting firms, and as a think tank fellow. Further information available upon request.

Education

Wharton School, University of Pennsylvania (MBA, 2009)

- Awarded Henry Morgenthau Prize by family of former Treasury Secretary for excellence and commitment to the advancement of public policy and finance
- Graduate Teaching Assistant: Corporate Finance, Financial Accounting, Management Communication

Harvard University (BA, 2004)

- Elected and served as student body president
- Prison Instructor: taught inmates in a large Boston facility, leading many to successful GED completion

The CHAIRMAN. Thank you, Mr. Chopra.

Well, let’s start by asking the basic question, and I’ll ask this of Mr. Simons, Ms. Wilson, Mr. Phillips, and Mr. Chopra. I know each of you appreciates the importance of cooperation between the FTC and Congress. Nevertheless, these nomination hearings give us an opportunity to underscore that point.

So the question is, If confirmed, will you pledge to work collaboratively with this Committee and its members to provide thorough and timely responses to our requests for information?

Mr. SIMONS. I would be thrilled to, Senator.

Ms. WILSON. Absolutely, Senator Thune.

Mr. PHILLIPS. Absolutely, Senator.

Mr. CHOPRA. Yes, absolutely.

The CHAIRMAN. Thank you.

I’m going to direct this question to all four nominees, and it’s kind of a big question, but if you could perhaps maybe summarize your views on this. But with the growth of search in social media in recent years, I would like to get a response from each of you regarding the state of competition in the American technology sector. Some argue that big tech should be subject to more antitrust scru-

tiny. The applicable law would seem to require a more nuanced analysis, one that's not based on size alone.

So could you just sort of fairly quickly describe your views or your antitrust concerns with respect to large tech firms, such as Facebook and Google?

And, Mr. Simons, we'll start with you.

Mr. SIMONS. Sure, happy to. So at a high level, I believe that big is not necessarily bad. I also believe that big is not necessarily good. Sometimes big is good, sometimes big is bad, and sometime it's both at the same time. Oftentimes, companies get big because they are successful with the consumer. They offer a good service at a low price, and that's a good thing, and we don't want to interfere with that. On the other hand, companies that are already big and influential can sometimes use inappropriate means, anticompetitive means, to get big or to stay big, and if that's the case, then we should be vigorously enforcing the antitrust laws and attacking that conduct and prohibiting it. That's my overall approach, Senator.

The CHAIRMAN. Thank you, Mr. Simons.

Ms. Wilson.

Ms. WILSON. Thank you, Senator. I know there have been questions about whether the antitrust laws, as currently crafted, are sufficient to address these issues, I would like to affirm my view today that in fact the antitrust laws, as written, are broad and flexible and are capable of adapting to evolving technology. So I have no concerns at this time about our ability to address the issues that may arise under the FTC's current jurisdiction. Obviously, if we find that there are any gaps, we would come back to you and open a dialogue about that.

In terms of whether there are issues, I understand that there have been investigations into prominent technology companies in the past, there has been a lapse of time, and technology has evolved. And so it may make sense to take another look at concerns that have been raised. My door is open. I am interested in hearing concerns or complaints that people may have about various companies. There is no company that is above the law or beyond the reach of the law.

If confirmed, I would support Chairman Simons in taking a look at potentially unlawful conduct and following the facts where they lead.

The CHAIRMAN. Thank you.

Mr. Phillips.

Mr. PHILLIPS. Thank you for the question, Senator. In a sense, it is "the" big question. Like many Americans, I experience daily the incredible impact that many of these firms have on my life. I see the impact they have on the lives of others, including even my little children. I think the FTC has a very big role to play here in applying the law fairly and applying it carefully, and, very importantly, in continuing to keep abreast of changing trends in the markets, watching how they develop, and seeing how our laws, both consumer protection and antitrust, apply to them.

I don't know all the answers, but the two commitments that I want to make to this Committee are, first, that if confirmed, I will help keep the agency abreast of developments, working with career

staff and my colleagues here; and, second, if there are violations of the law, no matter who is committing them, that the FTC will enforce the law.

The CHAIRMAN. Thank you.

Mr. Chopra.

Mr. CHOPRA. Thank you. Yes, I want to just offer a few observations. One is that, unlike most sectors of the economy, large technology firms don't just compete with each other, they're competing with several other market verticals and sectors of the economy. They're competing with health care companies. They're competing with retail. And so many other major sectors. And this has been a real challenge for equity and debt analysts seeking to predict how these industries will evolve, and how profitability and market dynamics will occur. And I think that it implores the Commission to make sure that we have the adequate talent, analytical capabilities, and to engage in constant learning.

I agree with Mr. Simons that there's a real role to continue to look back at past actions to determine whether models and empirical analysis have been accurate, how they can be evolved, but I think it's an area that we need to be humble and continue to learn to effectively understand dynamics in this marketplace.

The CHAIRMAN. Thank you.

Mr. Simons and Mr. Chopra, the American Bar Association's Antitrust Law Section issued a 60-page report in January 2017 on the state of antitrust enforcement. The Antitrust Section makes a number of recommendations for improving the FTC's handling of antitrust and consumer protection issues, such as recommending that all consumer protection orders should sunset in 5 years absent extenuating circumstances, such as fraud or recidivism. Do you agree with this recommendation regarding a 5-year sunset for all orders? And if so, will you seek to implement this reform should you be confirmed?

Mr. SIMONS. So first let me say that the ABA Antitrust Section does a terrific job. They have a whole host of extremely thoughtful people. And so anytime they make a recommendation, you want to think about it seriously. And so that's what I would commit to do. I don't have a conclusive view yet. I would want to talk to the staff at the agency before reaching any conclusions on that. And, of course, I would want to talk to my fellow Commissioners.

The CHAIRMAN. Yes.

Mr. CHOPRA. Senator Thune, the report had a number of recommendations, some of which Chair Ohlhausen has already sought to implement, and that appears to be well received. I would share that with respect to model orders, I think the recommendation about revisiting some of those model orders with respect to consent decrees that are filed in administrative proceedings or in Federal court looking at whether those lengths is appropriate. Twenty years, that is currently used, I know is not common in all Federal agencies, so I think it's worth always revisiting whether things can be changed or not. But I would really want to consult with the experts and staff at the Commission before making any final commitments.

The CHAIRMAN. Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you very much.

Welcome to all of you, and thank you for being here. Thank you for your service. In particular, welcome to Mr. Phillips, as a member of the Senate family, and thanks for your work on the Senate Judiciary Committee, where I also serve.

I assume, by the way, that your request for patience was for your father, the law professor, not for your children.

[Laughter.]

Mr. PHILLIPS. Senator, I have long since learned to ask others for patience with my father. I try not to ask others for what I myself sometimes cannot give.

[Laughter.]

Senator BLUMENTHAL. And I assume he's not teaching anyone *Monopoly*.

[Laughter.]

Senator BLUMENTHAL. Let me begin by saying that the FTC is entering a new era. It has a storied and wonderful past, but the simple stark fact is that consumers and competition have never been more threatened as the means of delivering products and making them, and the products themselves become more complex and important, so do the challenges of protecting competition and consumers from all of the schemes that now can be used on the internet rather than snail mail and other means of contacting and working the chains of delivery of products to consumers.

So I think that the FTC needs to enter this new era with new energy and new tools. And that's why I have introduced, for example, laws that would protect against data breaches.

Mr. Simons, you and I have talked about the need for better protection for consumers against data breaches. My hope is that you will, and the other Commissioners will, support the legislation that I have introduced. And I don't know whether you've had a chance to consider further the Data Breach Accountability and Enforcement Act of 2017. I hope that you've thought more and perhaps you could support it. Do you have another—any more opinions on it?

Mr. SIMONS. Sure, Senator. Thank you for the question. One of things that I am extremely concerned about is whether the FTC has sufficient authority to deal with data breaches, particularly in terms of being able to create sufficient deterrents, create an incentive for the companies to take care of the consumer data as they should. And right now, we don't have civil penalty authority, and I think that's something that we should consider very carefully and take a very close look at. So I'm very sympathetic to your bill, and I look forward very much to working with you on it.

Senator BLUMENTHAL. Would the other nominees agree with that view?

Ms. WILSON. Yes, I would.

Mr. PHILLIPS. Yes.

Senator BLUMENTHAL. Sorry.

Mr. CHOPRA. Yes. If I could add, Senator, that data breaches impose great deals of costs also for small enterprises. The Equifax data breach has led to significant losses for community banks, cred-

it unions, other financial institutions. So I think we need to think about the whole picture, including harms that occur to consumers.

Senator BLUMENTHAL. There are various areas where the FTC in this new era needs reinvention, and that's one of them. Another seems to me to be drug pricing and drug shortages. Every Member of this body I think is in favor of making drug prices more affordable to consumers. The President has talked about it. And yet every other day seemingly there are reports of a drug or device being marked up by 200 or 300 percent.

I am cosponsor of legislation titled, "Improving Access to Affordable Prescription Drugs Act," that directs the Department of HHS and OIG and the FTC to work together to create a task force that would try to reduce the cost of prescription drugs. It is only a beginning. There needs to be vigorous and strong enforcement of our antitrust laws against the consolidation that has occurred in that industry as well as others.

And with all due respect, Ms. Wilson, in the airline industry as well. If we have time for a second round, I will be asking you about that industry.

But let me focus now on drug pricing. Would you agree, Mr. Simons, that we need more vigorous enforcement in this area?

Mr. SIMONS. Senator, I'm very concerned, as you just described, with drug pricing. I think the pharma industry is a critical industry for our economy and for the consumers. It affects people who are in a very vulnerable point in their life often. And so I'm very interested in dealing with that. As we spoke when we met, I would like to explore putting together a drug pricing monitoring task force so that we can see in real time or as close to real time as possible what's going on with drug pricing, act as quickly as possible, try to identify when high pricing is caused by anticompetitive conduct so we can investigate immediately, and engage in enforcement actions quickly; if the price spikes are caused by something maybe that is regulatory in nature, alert the FDA to that; and if it's something else, then potentially maybe legislation would be appropriate, and come talk to you about it.

Senator BLUMENTHAL. Would you consider supporting the measure that I mentioned just now?

Mr. SIMONS. I would certainly consider it.

Senator BLUMENTHAL. Do any of the other nominees have views on that topic?

Mr. CHOPRA. Well, I'll just add that I think the Commission needs to anchor its work to where it can really focus on the pocketbooks of consumers and activity in the economy. And given that so many patients are an ever-increasing share of spend on prescription drugs and health care, it must be a top priority to enforce all the applicable laws.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal.

Senator Schatz.

**STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Mr. Chairman.

Thank you all for your willingness to serve. Thank you to your families for supporting you in this endeavor. I want to ask you a little bit more about the credit bureaus, the credit reporting agencies. They operate basically in the dark. The FTC has some analysis that indicates you have a high error rate. It's difficult exactly to determine what the material error rate is, but let's call it in the, you know, mid-low single digits, which means that millions of Americans are unable to obtain employment or a loan for a car or a house as a result of an error and a customer relationship that is not in their possession.

Although the credit bureaus call us their customers, their customers are actually the people who are evaluating our creditworthiness. We are not in possession of the data that is being sorted, aggregated, and then sold, or rented in some instances, by these companies. And the FTC has done some good work here, just as the Congress has done some good work here. But these credit bureaus operate almost entirely in the dark, and it has real impact. This not just a consumer issue, this is also a question of the ecosystem itself.

I'll preface my question with the following. I do not want to blow up this ecosystem. We do need some way to evaluate the creditworthiness of individuals. We don't want to go back to the days when you had to walk in and present yourself to a banker, who evaluated your creditworthiness sometimes on the basis of a hunch or whether they knew you personally. So I understand the need for these credit reporting agencies to exist, but I think the FTC has to do more.

I'll start with Mr. Simons and go down the line as quickly as possible, do you think the FTC has the authority to do more? And are you inclined to explore those possibilities?

Mr. SIMONS. Well, Senator, I certainly share your concerns. And that's something I definitely would want to look into, talk to the staff at the FTC, and would be happy to work with you on it.

Ms. WILSON. I, too, share your concerns, Senator. As you know, the Federal Trade Commission does have enforcement responsibility for a number of laws in this area, including the Fair Credit Reporting Act and the FACT Act. Right before Chairman Tim Muris arrived, there was a significant enforcement action against the three credit rating agencies, and under Chairman Muris, at least some of them were found to have violated orders that would allow consumers easily to call in and verify their credit records and then make changes if necessary.

I would be very interested in talking with FTC staff to find out whether they think there are areas where additional authority would be useful. I would look forward to continuing the dialogue with you, with my colleagues on the Commission, and with FTC staff, if confirmed.

Mr. PHILLIPS. Senator, thank you. As we discussed yesterday, for a lot of Americans, it's really frustrating to face large corporations that maybe they can't even access, the errors of which can result in really bad outcomes for all those people. And it can affect millions of Americans. If confirmed, I look forward to getting briefed on what the agency is doing, what it can be doing, and working with you and your staff on that issue.

Mr. CHOPRA. Senator Schatz, this is an industry where you cannot vote with your feet. When consumers can't take their business elsewhere, competitive dynamics cannot address certain consumer harms. And just in 2017, we've seen a number of serious issues come to light in this industry. In one case, the court found that a credit bureau was falsely marking consumers as terrorists and drug kingpins. And we have to get to these core accuracy issues, and this is something that I think really warrants bipartisan attention about what we can do to make sure the plumbing of our consumer financial infrastructure is working better.

We need to use the Fair Credit Reporting Act and enforce it vigorously as well as the other laws. And I agree that the Commission needs to amp up its work with respect to consumer reporting agencies.

Senator SCHATZ. Thank you.

My final question is for Mr. Chopra, and I think I've spoken to all of you about this. I'm very interested in this area of predictive algorithms. Some of it is just simple data analytics that were available to us decades ago, but some of it is getting more robust and sophisticated. I'm very interested in the space because it's not clear who has jurisdiction. Some of it may be DOJ, some of it may be HUD, some of it may be the FTC—of these predictive algorithms that can essentially serve as a proxy for race or for geographic location, for disability status, for income. And so the degree and extent that some of these predictive algorithms are sold as a product either to a government or a company, but they're a black box because they're proprietary, it's very difficult to determine whether laws are being violated.

So I'm wondering whether you can all take a look at this. I'll take Mr. Chopra in person and the rest of you for the record on this question.

Mr. CHOPRA. Yes, Senator. Fifty years ago almost, we passed the Fair Credit Reporting Act to make sure that there weren't secret databases making decisions about our lives without consumers having access to that data. And increasingly outside of the credit reporting sector, the industry of data brokers and other sectors are using more and more data. The FTC did publish a big data report that highlighted some of those issues. But I look forward to working with you and others so that we can figure out what the industry dynamics and potential issues for consumers are.

Senator SCHATZ. Thank you.

The CHAIRMAN. Thank you, Senator Schatz.

Senator Udall.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you. Thank you very much, Chairman Thune.

And I'd like to direct a couple of comments and questions to Mr. Simons here initially.

How will you prioritize the significant number of issues that are currently pending before the Commission?

Mr. SIMONS. So, Senator, thank you for the question. A first priority for the Commission, if I am confirmed, is going to be making

sure we are doing vigorous enforcement, both on the consumer protection side, and on the competition side, and that we do it in a way that gets the biggest bang for the taxpayers' dollar, and that would be to focus our attentions mostly where harm is the greatest. So that's how I would prioritize things, Senator.

Senator UDALL. Now, given the increased number of issues before the FTC, what are your views on the adequacy of the current FTC budget, and how will you ensure the Commission has the resources necessary to protect consumers?

Mr. SIMONS. Senator, I pledge that I will look carefully at the FTC budget, if confirmed, and make sure that we have what we need to do the job that we need to do, and if we don't, I will come to you and ask for—well, I won't come to you, but I'll ask for more money.

Senator UDALL. Great. Thank you.

As we discussed in our meeting, and it was a very good meeting, I'm concerned about the ability of Federal agencies to protect their networks against cyber intrusions, including the use of bots targeted against public comment systems. Can you address the ways you will empower or elevate the FTC's CIO?

Mr. SIMONS. Yes. One of the things that I'm going to do, if confirmed, when I first get to the FTC is to talk to the CIO and the folks there who are dealing with these issues. This is a big concern for me, it's an important concern, and I want to address it quickly.

Senator UDALL. I have a long history of working with the Federal Trade Commission on false labeling of sports equipment, especially sports equipment targeted to young people. The FTC has done some very good work there. Specifically, it sent letters to retailers and manufacturers calling out certain deceptive practices. However, it is important that the FTC continue to monitor for future misleading labeling. Will you commit to me to continue to monitor the marketplace, including both traditional and online retailers and use the enforcement authority of the FTC for any marketer or manufacturer repeatedly making false claims?

Mr. SIMONS. I would be happy to make that commitment. This is an issue that is near and dear to my heart. As we discussed in your office, my son had a serious concussion while playing football in high school, and so I saw the effects of that. And so it's very, very important to me.

Senator UDALL. Great. Thank you.

This next question is addressed to all nominees. Consumers are purchasing more and more items that are connected to the Internet, but they may not understand the enormous amount of data that those items may collect. These items can include children's toys or monitoring devices. Can you talk about the actions that the FTC can take to help educate consumers about data collection practices of manufacturers and other companies? What are your ideas on how to promote consumer protection in an increasingly online and connected world?

Why don't we start with Mr. Chopra down there.

Mr. CHOPRA. Senator Udall, I think consumer education and engagement to increase understanding about the sheer volume, growing on an exponential basis, of data collected is important. I want to particularly underscore that collection of data on children,

servicemembers, and other pockets of our populations probably warrant more specific attention. Of course, the Congress already has certain protections in place that address children's privacy, that address privacy of students, and I think we should continue to dig deep to figure out how we'll increase understanding and awareness by consumers.

Senator UDALL. Great.

Mr. Phillips.

Mr. PHILLIPS. Thank you, Senator. I largely agree with what my colleagues have said, and I think your focus on consumer education could not be more important. There is a lot that the FTC can do, but outreach to the consumer community, to the business community, to particularly affected groups, like the military, the elderly, and, in particular, the parents of kids I think is essential. Also, using Members of Congress and the abilities that they have to get the word out. I think all those things are critical.

Senator UDALL. Yes.

Ms. Wilson, let me interrupt you there because my time is really gone here. But I wanted to make a plug, and I bet Senator Blumenthal will join me on this, a plug for the FTC working with state attorneys general. Both of us were attorneys general sometime in our career, and it just seems to me that you can amplify consumer efforts by doing that. State attorneys general have their ear to the ground, they hear directly from consumers. Many in many states have these very strong consumer protection laws, and the attorneys general are out there doing that. So I think a good working relationship with state attorneys general would help you kind of amplify the work that you do.

So with that, I'm finished, Mr. Chairman. Sorry for running over a little bit.

The CHAIRMAN. Thank you, Senator Udall.

Senator Hassan.

**STATEMENT OF HON. MAGGIE HASSAN,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator HASSAN. Thank you very much, Mr. Chair.

Good morning to all of our nominees. Congratulations on your nomination. And to all of the family members of the nominees who are here, thank you for supporting your loved ones in this process. It is a family affair. And I am very, very grateful, especially to the children in the audience, who are going to be sharing their parents with the American people, and they deserve our thanks for that, too.

I want to start with a question for you, Mr. Chopra. Given your finance background, I want to ask you about student loan scams. Predatory student loan providers remain a serious problem for American consumers. These companies exploit vulnerable young people by charging outrageously high, often illegal upfront fees in addition to monthly charges. The FTC in several states began a crackdown on this kind of activity last fall, but it is clear that more needs to be done at the Federal level to make sure that these kind of predatory companies cannot operate anywhere and harm consumers in the United States. What more can the FTC do to fight this kind of predatory lending behavior?

Mr. CHOPRA. Well, Senator Hassan, this bears an uncanny resemblance to the foreclosure crisis where, as mortgages went bad, foreclosure relief firms, many of which were fraudulent, preyed on so many communities that were hit hard by foreclosures.

There is a student loan default in this country once every 28 seconds.

Senator HASSAN. Wow.

Mr. CHOPRA. That's 3,000 a day, over a million a year, and we discussed this. I know there has been some criticism of the FTC on being late to this, but I really think that the staff has done a terrific job on its student debt relief work, and I think we need to amplify that work and look to work with attorneys general and others to make sure that we are not allowing a repeat of what we saw in the aftermath of the foreclosure crisis.

Senator HASSAN. Thank you very much for that answer.

This is a question for the panel, and again we have limited time, so I'll start with Mr. Simons and work down. But in the past, the FTC has looked at videogames, issuing a report on the marketing of violent videogames to children in 2009 and in 2013. It also studied the Entertainment Software Rating Board, or ESRB, finding, one of the most effective voluntary enforcement boards. That's why I'm confident that the ESRB will take this issue seriously. So today I am sending a letter to the ESRB outlining my concerns with microtransactions, which may take the form of loot boxes, that's what they're called, and allow in-game purchases for surprise winnings, and in many cases, these are being marketed to and used by children who are obviously particularly susceptible to being addicted to them.

Last month, the World Health Organization recognized gaming disorder as a diagnosable disorder. We should be doing all we can to protect our children and to inform parents about their options when it comes to these types of games.

So the question for you, Do you agree that children being addicted to gaming and activities like loot boxes that might make them more susceptible to addiction, is a problem that merits our attention? And depending on how the ESRB responds to my inquiry, would the FTC be willing to look at loot boxes as an issue independently?

And I'll start with you, Mr. Simons.

Mr. SIMONS. Yes, I would agree on both counts.

Senator HASSAN. OK. Thank you.

Ms. Wilson.

Ms. WILSON. As the mother of two teenagers, I would agree that the extent to which teenagers play videogames is certainly of concern, and I would be willing to talk with FTC staff and your office to get more up to speed on this issue, should I be confirmed.

Senator HASSAN. Thank you very much.

Mr. Phillips.

Mr. PHILLIPS. Yes, Senator. While I am not yet expert on this issue, I have credible reason to believe that I will become or be forced to be an expert on it going forward. And I look forward to working with career staff, with my colleagues, and with you on that issue.

Senator HASSAN. Thank you.

Mr. Chopra.

Mr. CHOPRA. Yes, Senator.

Senator HASSAN. Well, thank you.

I have one more question that will take up far more than the 45 seconds I have left. So why don't I decide to submit that in writing. Thank you all very, very much.

And I yield back my time, Mr. Chair.

The CHAIRMAN. Thank you, Senator Hassan.

Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman.

And welcome to all of the panelists here. And congratulations on your nominations.

Many of my colleagues have already asked about data breach or privacy issues in general, but I wanted to ask you each whether you thought, given the Equifax issues that we've seen and the 5 weeks that it took to notify the public that the breach had happened, whether you think that we should have more rigorous mandatory or rigorous guidelines on notification for data breach?

Mr. SIMONS. Thank you, Senator. I think that's something definitely worth looking at. If confirmed, I would want to talk to the FTC staff about it, get their views, talk to my fellow Commissioners, and, of course, talk to you and other members of the Committee.

Senator CANTWELL. But do you think 5 weeks is too long?

Mr. SIMONS. I don't have a good basis to reach a conclusion at this point. One of the things that I understand is an issue is sometimes you want to make sure that you know what the breach is about, and hopefully you can fix it before you have to announce it. So sometimes it depends on the facts of the case and whether the breach notification is more appropriate sooner or later, but just as a general matter. But in terms of the notification itself and potential legislation, that's something I would definitely be interested in.

Senator CANTWELL. Ms. Wilson or any of the other witnesses?

Mr. CHOPRA. Well, I want to be careful not to prejudice any existing investigation, but I do think the data breach at Equifax was a wakeup call about the patchwork of state laws that we have and the appropriateness of how consumers are informed and how they are impacted by it. And so I'm very interested in working with all of you on data breach and data security issues because it is only going to be more frequent. It is not just impacting consumers and businesses, it impacts so many facets of our life, including our national security.

Senator CANTWELL. Do you think 5 weeks is too long?

Mr. CHOPRA. Again, I don't want to prejudice any ongoing investigation, but as a general matter and not speaking about any specific situation, several weeks after a major breach of personal data does not sound like it is fast enough.

Senator CANTWELL. Mr. Phillips or Ms. Wilson?

Mr. PHILLIPS. Thank you, Senator. Like my colleagues, I understand that the FTC has announced that it is investigating that matter, so I don't want to speak specifically to it lest what I say

impact that investigation in any way, but obviously that is a major issue. And I look forward to working with my colleagues, staff at the agency, and with you on what is appropriate.

Senator CANTWELL. Ms. Wilson?

Ms. WILSON. I agree that this is a significant issue. I have spoken with my colleagues here at the table today. We recognize that the Federal Trade Commission is going to spend a great deal of time and energy investigating these issues and figuring out how best to serve the American consumer. And so I would join my colleagues in saying I don't want to prejudice an ongoing investigation, but I look forward to talking with staff, receiving briefing based on nonpublic information, if confirmed, and then talking with you further about additional authority or legislation that may be required.

Senator CANTWELL. Yes. I guess I was hoping—I mean, I think the facts are well known because they've been in the press, and I'm pretty sure this Committee had a hearing on it, so I'm pretty sure we're familiar with the fact that there was a patch, a software fix, available, and yet it wasn't applied within the company, and now 145 million people's personal data has been, you know, impacted.

So I think the thing that we want to understand is what your personal views are on how important it is you think the FTC play an aggressive role here in filling the gap. If you, as FTC members, are not thinking aggressively about this issue and what role we need to play in monitoring how to protect consumers on privacy, then that's of great concern to me, and I'm pretty sure it will be of great concern to my constituents.

I do have some questions about your current antimanipulation authority as it relates to energy and oil markets and—but I see my time is about to expire, Mr. Chairman, so I'll submit that for the record.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman.

Thank all of you for your willingness to serve.

I'm going to piggyback on Mr. Blumenthal's question on prescription drug pricing because we see a lot of consolidation in this industry. As an example, there is continued consolidation in the PDM industry, where large companies dominate the market. Many of these companies also own proprietary pharmacies, retail, and mail-order, which compete with our local retail pharmacies, often on an uneven playing field. As somebody who represents a state with a lot of seniors, this obviously is very important.

So, Mr. Simons, how do you expect to deal with this at the FTC and how are you—I saw you shaking your head, so—

Mr. SIMONS. So I agree wholeheartedly with that concern. One of the things I want to do at the Commission, which is spelled out in a little more detail in my response to the Committee's questionnaire, is to establish a merger retrospective program so that we look at self-critically whether our merger enforcement has been as effective as it should be. And if it hasn't, why hasn't it? And see how we can fix it.

So as part of that, that look-back, I think it might make sense to look at the industry you're describing, and that will help us determine whether, you know, what the problem is and how to fix it.

Senator CAPITO. Right. Yes.

Mr. Phillips, did you have a comment on that?

Mr. PHILLIPS. Yes, Senator. And thank you for your question. I don't need to tell you that the price of health care for Americans may be the number one issue in many of their lives financially speaking.

The FTC has a proud decades-long bipartisan track record of working on helping to keep competition going in health care markets, from reviewing mergers of hospitals to policing prescription drug prices. If confirmed, I look forward to working and making that issue a priority.

Senator CAPITO. Ms. Wilson?

Ms. WILSON. I agree with Mr. Phillips, that the Federal Trade Commission has a long and rich history of ensuring competition in health care markets, including in prescription drug markets. This is an area where, under Chairman Muris, the FTC spent a great deal of time and effort. It is an important one for all Americans given that health care costs now account for almost one-fifth of GDP.

And so I agree with my colleagues, this is an area where I anticipate, if confirmed, spending a great deal of time and effort.

Senator CAPITO. I'm going to jump to another topic real quick because, again, our time is short.

Ms. Wilson, you and I talked about this when you were in the office, I think with Mr. Simons, too, is this telemarketing, the new spoofing that we all see coming across our phones. But also robocalls in telemarketing has taken on a whole different form than the original Do Not Call Registry list that we saw that developed successfully.

Several of you mentioned this in your statements, about the real need for technology and the Commission's technological experts to keep ahead of the next algorithms that are being developed to get around the rules or to reach the consumer.

So, Ms. Wilson, you had a good answer for that for me in my office, and I wonder if you could put it on the record for me, please?

Ms. WILSON. Absolutely. Under Chairman Muris, the Commission launched the Do Not Call initiative. If Chairman Muris were here today, he would tell you that was his 15 minutes of fame. Unfortunately, technology has now outpaced that effort, and there are holes that need to be plugged. Robocalls are essentially a form of harassment and are unlawful under a variety of different statutes. We need to find a technological solution and move forward with significant enforcement in that area. And I look forward to working with my colleagues and with you, if confirmed, to make sure we have the solution for that issue.

Senator CAPITO. Thank you.

I'll just make a quick comment, and then, Mr. Chopra, I'll let you make a comment.

Again, going back to seniors, this I think really impacts ability for fraud for them and to be really taken advantage of, not just

emotionally, but financially and every other way. We see it happening all the time.

Mr. Chopra, do you have a response?

Mr. CHOPRA. You read my mind. I was just going to share that I think we also need to look at robocalls and telemarketing issues, not as an inconvenience, but as a real harm to many people. Many individuals do not have the luxury of screening their calls. They might be waiting for a doctor's call or the next job, and I think this is something we need to remember, that it is not simply an annoyance.

Senator CAPITO. Thank you.

The CHAIRMAN. Thank you, Senator Capito.

Senator Lee.

**STATEMENT OF HON. MIKE LEE,
U.S. SENATOR FROM UTAH**

Senator LEE. Thanks to each of you for being willing to serve and for being here to answer our questions.

Some of you might be familiar with the proposal known as the SMARTER Act. The SMARTER Act is a piece of legislation that would ensure that the Department of Justice antitrust officials and the Federal Trade Commission officials would have to meet the same standard when seeking a preliminary injunction to block a proposed merger, and would also require the FTC to litigate merger cases in Federal court instead of relying on the administrative processes to which they have access.

At some points in the past, I've discussed these proposals with individuals who will say, "I don't necessarily see the need for legislation like that, and don't like it because we don't need it to be that way anyway. We already don't do those things, and there's no reason to change it."

So I guess I've got a couple of questions related to this. So I'd like to have each of you tell me, number one, whether there is any good reason to have a different standard applicable to the FTC than applies to the Department of Justice when either entity is trying to block a merger; and, number two, whether you would ever authorize the filing of an administrative complaint without seeking an injunction in Federal court?

Go ahead. We'll start with Mr. Chopra.

Mr. CHOPRA. Market participants shouldn't have to navigate multiple standards whenever possible. I want to explore this more with you and others. One question I would have is with respect to speed of the overall proceeding. Administrative proceedings can sometimes be faster and cheaper for parties, so that would be something I would look into. As a general matter, though, I take your point that these issues may be best suited for Federal court.

Senator LEE. Mr. Phillips.

Mr. PHILLIPS. Thank you, Senator. It has been great to work with your staff over the last 6 years.

My answer to the first question is I can't think of any reason whatsoever. The law should not operate as an arbitrage between which Federal agency you appear in front of. And companies should not have to consider that question when deciding whether and how to pursue mergers and acquisitions activity.

As I said to you when we met, personally, I need to learn a little bit more about the operation of Part 3. And if confirmed, I look forward to working with my colleagues, with career staff, and with you on that question.

Senator LEE. Great. Thank you.

Ms. Wilson.

Ms. WILSON. Thank you, Senator Lee. I think this is a very important issue. I think it's a matter of good government that businesses have clarity and predictability when they approach the government, particularly given concurrent jurisdiction between the FTC and DOJ. And so I do not believe there is a good reason for differentiated standards. There are people who will tell you that the standards as applied essentially come out the same way, but I think there is a great deal of value in conveying to businesses and the public that the agencies apply the same standard.

In terms of where complaints are brought, I would think as a general rule for unconsummated mergers, seeking a PI in Federal court would be my inclination. Obviously, there may be extenuating circumstances that should be considered, and I would want to talk with FTC staff about that. But I think as a general rule, seeking a PI in Federal court would be the right way to go for unconsummated mergers.

Senator LEE. OK. Mr. Simons.

Mr. SIMONS. Thank you, Senator. I don't see any reason why there should be two standards. I am one of those people who, though, agrees, as a matter of practice, that the same standard is applied. But I see no reason why it shouldn't be cleaned up and made very clear.

In terms of where the FTC files its merger challenges, I think generally it should be in the Federal court. There should be one bite at the apple. The litigation should occur in the Federal court, and if the agency loses there, they shouldn't then be going to administrative trial.

Senator LEE. Excellent. I appreciate that answer very much, and that is very helpful.

In any case, whether we're talking about antitrust law or otherwise, but particularly relevant here, since we're talking not about a hypothetical, but about real-world situations, someone's fate, as a litigant, ought not be determined by the toss of a coin, the type of random decision that might dictate that a proposed merger be reviewed by this agency or the other. So when we have differing substantive standards that apply to one versus the other, when one is required to go before a Federal court and the other has another option, to me, that makes no sense. No one has ever explained to me an adequate reason why there ought to be two completely different systems.

I understand the efficiency argument, that one has been made in the past, but the fact that something might be more efficient for the government ought not change someone's access to due process, which is what our system is all about.

I see my time is expired, and the Chairman is giving me that look.

[Laughter.]

Senator LEE. But I thank each of you for your thoughtful answers.

The CHAIRMAN. I never give the Senator from Utah that look. But thank you, Senator Lee.

Senator Wicker is up next. I have to depart for a meeting on infrastructure, but I will say to our nominees that we hope to move very quickly your nominations to the floor, and it's important that we get those important seats on the Commission filled. So thank you for your willingness to serve. And to your families who are here today, too, their willingness to serve and sacrifice as well because we all know how all these positions are very much family efforts. So thank you.

Senator Wicker.

**STATEMENT OF HON. ROGER F. WICKER,
U.S. SENATOR FROM MISSISSIPPI**

Senator WICKER [presiding]. Thank you. We'll now move to an eight-minute rule.

[Laughter.]

Senator WICKER. And you enjoy yourself at that other meeting.

Let me drill down on a specific issue, and then I'll back up and ask a more general one.

To all of you, thank you for meeting with me in my office. And I have a really good feeling that we're going to be able to work together in a bipartisan manner. But let me ask about the contact lens rule.

And I guess I'll just start with you, Mr. Simons. Where are we on that? As I understand it, the optometrists have always followed a rule that you write the prescription, and, of course, they're willing to fill it themselves, but also they write out the prescription, always give it to the patient or consumer, and it's up to the consumer to decide where to get that prescription filled. Now there's a new rule, which some of our providers think is a solution in search of a problem, that the patient must now sign that they got the prescription and putting the provider in a position of being a recordkeeper for several years.

So where are we on that rule? And without asking any of you to say how you would rule on that, what is your general feeling about taking into consideration the fact that we already have a rule that's working pretty well, and that this would put an administrative burden on people who are just trying to provide services?

So I'll start with you, Mr. Simons.

Mr. SIMONS. Thank you, Senator. So the rule revision is under consideration, under active consideration, at the Commission. I believe the Commission has scheduled, I think in March, another session to collect more information that will help it in its decision-making process. So I don't want to prejudge the result of that, but I have to say that, you know, if it ain't broke, don't fix it, if it turns out those are the facts.

Senator WICKER. Anyone else want to comment? I know we did talk about this.

Ms. Wilson.

Ms. WILSON. I would agree with Mr. Simons, Senator.

Senator WICKER. OK. Does anybody else want to add?

Mr. CHOPRA. I think we need to be very attentive to imposing requirements and burdens on our smallest entities, especially if they don't have economies of scale. So, as we discussed, Senator, I will probe on some of the assumptions around this and hope to make sure that we get a good solution here.

Senator WICKER. OK. Now, Ms. Wilson, you mentioned, and I was tickled to hear it, that we want to protect consumers, including preserving competition, in health care markets. Wow, if we could make some progress in this Committee or in this Senate or in this Congress on that issue, we would be doing a lot to help the American public.

Let me ask in particular, I hear concerns about the PBM transparency, pharmacy benefit managers, and I know the public doesn't understand it, but it is a source of huge frustration to many. Given the continued consolidation and growing negotiation leverage that PBMs have, what role should transparency play to enhance competition and consumer protection?

Ms. WILSON. To go back to what Senator Capito said about me, I am a firm believer in free markets and robust competition. You need to have full information and transparency in order to achieve efficiently functioning markets. And so without speaking particularly with respect to PBMs, more information makes the market function more efficiently.

With respect to PBM consolidation, I would concur with Mr. Simons that, if confirmed, it will be important to do merger retrospectives to determine whether the antitrust agencies have achieved the right balance in terms of permitting mergers that would allow innovation and economies of scale while at the same time blocking mergers or requiring remedies where they might otherwise cause harm to competition.

Senator WICKER. Well, you know, in a larger sense, there is just a lot of frustration with the pharmacists that have to comply with these rules, often having to do things retroactively to rectify problems that they didn't know about.

My time is up. Let me just say I'm glad to see at least three of you, and possibly all of you, talk about bipartisanship and the great tradition we have in this Commission of not lining up 3 to 2 on so many issues as we've seen elsewhere. So let me say that I heartily endorse that kind of sentiment coming from a bipartisan panel today, and I hope that tradition can continue to provide examples for future boards and future candidates to talk about in a positive manner in the future. So thank you very much.

And thank you, Madam Chair.

Senator CAPITO [presiding]. Thank you.

There has been a request for a break of 5 minutes, which we have agreed to. So we're going to break for 5 minutes, and I'm pretty strict on time. So it's 11:07. We're going to start back at 11:12 promptly. Please—thank you. At the call of the Chair.

[Recess.]

Senator CAPITO. Thank you all for that. I will report it is 11:13. Pretty good for Senate time.

I would like to now call on Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you. You were just as good Sister Superior at the Immaculate Conception Grammar School. You got that whole break in perfectly.

Net neutrality. In December, Federal Trade Commission Commissioner McSweeney wrote, quote, "Scrapping the FCC's net neutrality rules will harm consumers and content creators, and the Federal Trade Commission isn't going to be able to stop it. The Federal Trade Commission does not have specialized expertise in telecommunications. We don't have engineers or technical expertise in data network management practices. These are very real and significant limits to the effectiveness of the Federal Trade Commission's tools in ensuring that networks are open and free of harmful discrimination."

Mr. Chopra, do you agree with Commissioner McSweeney?

Mr. CHOPRA. I share a lot of the skepticism and concerns. I would also add that given ongoing litigation and rulings in the Ninth Circuit, the FTC may face an unlevel playing field where some major market participants are exempt from the Commission's authority while others are subject to it.

Senator MARKEY. Mr. Simons, do you agree with Mr. McSweeney?

Mr. SIMONS. Thank you, Senator. My view is that the FTC, if it gets back its authority in the internet space, is going to be a vigorous enforcer. We're going to take the statutory authority that we have and use it as best we can. I don't know exactly what types of anticompetitive or deceptive and unfair practices may come up. If those come up, we can reach them under our statute. If something comes up that we can't reach under our statute, then I would certainly come to you and the Committee and talk to you about a legislative fix.

Senator MARKEY. Well, the Federal Trade Commission lacks rulemaking authority, and the Federal Communications Commission does have rulemaking authority to prevent blocking, throttling, and paid prioritization by ISPs. You do agree with that?

Mr. SIMONS. We both have rulemaking, and they're different types of rulemaking.

Senator MARKEY. But in terms of being able to deal with those issues of throttling, paid prioritization, and blocking, you do not have that authority.

Mr. SIMONS. I want to talk to the General Counsel's office before I give a specific answer to that. I'm not entirely clear.

Senator MARKEY. OK. Well——

Mr. SIMONS. Because—and in terms of—Senator, in terms of—and——

Senator MARKEY. Just let me move on.

Mr. SIMONS. OK.

Senator MARKEY. I just want to reach a second——

Mr. SIMONS. Sure.

Senator MARKEY.—subject. And I will just say it does lack the authority.

On kids' privacy, there is a growing body of evidence from child development experts as well as former industry executives that

technologies are being purposefully made to be addictive. And here's the goal of all these companies, it's like the tobacco industry, you've got to get them early because then they might be your lifetime customers, so you've got to get them at 11, at 12, at 13, at 14, get them hooked, make it addictive, and then you've got them for the rest of their lives.

Under the Commission's Child Online Privacy Protection Act mandate, which I am the author of in 1999, what will you do to ensure that child-directed applications and the parent consent processes are fashioned in ways that really protect privacy and ensure that parents can make informed decisions about their kids, and that includes investigations into data practices, enabling profiling and targeting across devices, applications, and services?

Mr. Chopra.

Mr. CHOPRA. Well, I agree that those laws first need to be vigorously enforced. And, second, we've seen the market develop so quickly in ways that parents and our whole society could not see coming and the amount of data being collected on our children continues to increase. I think we need to be very vigilant and come back to you especially if we feel we don't have adequate authorities to address this.

Senator MARKEY. Will you each commit to an active pro-child privacy protection policy at the Federal Trade Commission during your tenure if you are confirmed?

Mr. Simons.

Mr. SIMONS. Yes, absolutely.

Senator MARKEY. Ms. Wilson.

Ms. WILSON. Senator, I thank you for your leadership on COPPA, and I agree.

Senator MARKEY. Great.

Mr. Phillips.

Mr. PHILLIPS. If confirmed, absolutely.

Senator MARKEY. If confirmed. Thank you.

I just think that's going to be the cutting-edge set of issues. It's time for these industries to come under scrutiny, to be made accountable for what they are doing. I mean, the public health implications of this now epidemic addiction amongst young people, especially in the minority community, much higher interestingly, than in other communities, is something that we have to pay much closer attention to.

Thank you, Madam Chair.

Senator CAPITO. Senator Klobuchar.

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Thank you.

And I want to thank Senator Cortez Masto for allowing me to go before her.

We had very good meetings. Thank you, all of you. And I appreciate as well your bipartisan work; that means a lot given how important these issues are.

And I have three issues, and you can maybe pick who answers them. The first is on the pay-for-delay issue. And I see former Chair Leibowitz out there somewhere, something he had worked on

at length. We have had some court cases that changed this, but, as you know, pharmaceutical prices have continued to increase. Senator Grassley and I have a bill that basically says that you can't make these deals to keep generics off the market. And I just would like to get someone's thoughts on that and the important role the FTC plays.

Mr. Phillips.

Mr. PHILLIPS. Senator, thank you for your question. As a Judiciary Committee staffer, I am well aware of yours and Senator Grassley's interest in the issue. The President called a few weeks ago for a focus on the cost of prescription drugs. That is an issue that hits all Americans, myself included, in the pocketbook every day, maybe every other day if we're a little bit healthier than I probably am right now.

The FTC has a long bipartisan tradition of policing anticompetitive conduct in prescription markets. And if confirmed, I look forward to working with my fellow Commissioners, career staff, with you, on continuing that.

Senator KLOBUCHAR. OK. Thank you.

The second question, the cyber attack against Equifax exposed the personal information of more than 145 million Americans, essentially anyone that has a credit history. And I recently sent a letter urging the FTC to broaden its investigation of the Equifax data breach in response to reports indicating that the Director of the Office of Management and Budget had directed Consumer Financial Protection Bureau investigators to pull back from their investigation.

Mr. Simons, what is the FTC's role in conducting this investigation? And are you committed to advancing it?

Mr. SIMONS. So, Senator, I don't want to prejudge any existing matter except to say that on any major issue, certainly any major issue involving data breaches, I would expect the Commission to be all over it, providing and using the necessary resources and just being very vigorous.

Senator KLOBUCHAR. OK. Thank you.

Then my third and final area is antitrust. I am the Ranking along with Senator Lee, who chairs the Antitrust Subcommittee in Judiciary. And last fall I introduced the Merger Enforcement Improvement Act as well as the Consolidation Prevention and Competition Promotion Act to enhance the ability of antitrust agencies to conduct enforcement in the current wave of consolidation. And ensuring that the agencies have the financial and legal resources to protect competition I believe is more important than ever as these deals become more sophisticated as you see this kind of takeover of certain areas, and especially what you're seeing right now in the bills.

As you know, one is focused on getting more resources by having a fee on some of the megamergers, something that I hope is not that controversial, so taxpayers aren't footing the bill here for these complex reviews from the FTC as well as antitrust in Justice. And then the second one is more focused on acknowledging the changes we've seen and looking at monopsonies and other things.

So, Mr. Chopra, in the current economic climate, should merger enforcement be a priority for the FTC in the near to medium fu-

ture? And why? And what can we do to bolster merger enforcement?

Mr. CHOPRA. Well, of course, as I shared earlier, we face issues with barriers to entry in so many industries with small business starts at a low.

One of the observations I have about the Commission and government agencies in general is that it's not so easy to adapt its personnel and workforce to changing market conditions. The interest rate environment and what the markets tell us is that these deals will be robust, they will be big, and whether the Commission has adequate resources and flexibility to vigorously police in a timely fashion, I think that's an open question for me, and I would like to work further on that with you.

Senator KLOBUCHAR. OK. Thank you.

And, Ms. Wilson, I promise to send you a question on the record because I'm going to give it over to Catherine Cortez Masto because she was so kind. So thank you.

Senator CAPITO. Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you very much.

Senator CAPITO. You're welcome.

Senator CORTEZ MASTO. A pleasure to meet some of you and talk with you. And I know I've got some future meetings.

Welcome to all of the family members. All of you have been patient, although fidgeting a little I see over here, compared to the young kids over there.

[Laughter.]

Senator CORTEZ MASTO. But welcome, welcome. And we're almost done.

So let me start with a couple of questions just for all of you if you don't mind answering just in a short answer. Can I get your commitment to be an active consumer protection agency, including on marketing practices and data security and privacy?

Mr. Simons, I'll start with you.

Mr. SIMONS. That's an easy yes, Senator.

Ms. WILSON. Absolutely yes, Senator.

Mr. PHILLIPS. Absolutely, Senator.

Mr. CHOPRA. Yes. And I would add the Commission also needs to be a key partner with attorneys general and others on this.

Senator CORTEZ MASTO. Good. That was another follow-up question I had for you. Thank you.

What do you envision is the most contentious and difficult set of consumer protections coming before you if you are confirmed?

Mr. Simons, I'll start with you.

Mr. SIMONS. I think it's how we handle the data breaches. They're becoming, you know, much more significant, much more frequent, and I think that's a real, real, real serious concern for us and that we need to pay close attention to it.

Senator CORTEZ MASTO. Thank you.

Ms. WILSON. I would agree with Mr. Simons. When I was at the Commission in the early 2000s with Chairman Muris, we spent a great deal of time working on data security and consumer privacy

issues. And I foresee the same, frankly, in the coming years, if confirmed.

Senator CORTEZ MASTO. Thank you.

Mr. PHILLIPS. I agree with my colleagues, Senator. I would add, though, we can't allow contentious issues to distract us from the bread and butter of the agency on the consumer protection side, looking out for children, veterans, the elderly, and Americans generally.

Senator CORTEZ MASTO. Thank you.

Mr. CHOPRA. I would agree on the issues related to big data. I would also add that it implicates the consumer protection mission as well as the competition and privacy missions, and it needs to be very high on the list, if not the highest. And the data breach at Equifax also underscores how the Fair Credit Reporting Act and oversight of the credit reporting agencies needs to be paramount.

Senator CORTEZ MASTO. Thank you. And then let's talk about interaction with states. How do you envision your interaction with the states and the attorneys general on matters that you have similar when it comes to unfair and deceptive trade practices and competition?

And I'll start with Mr. Simons.

Mr. SIMONS. Very close working relationship. I think they're critical to us using our assets most efficiently and them using their assets most efficiently. So I'm very much in favor of a very close working relationship.

Senator CORTEZ MASTO. Thank you.

Ms. WILSON. Senator, not surprisingly, I agree with Mr. Simons. I think it is very important to have a close relationship with the state attorneys general, who can be, in many instances, more familiar with the facts on the ground.

Mr. PHILLIPS. Senator, I agree with all of that. As you know well, state attorneys general can be a force multiplier for the FTC. They also are closer to the ground and may understand issues and how they're impacting consumers better than we do. We need to continue those relationships. I would only add that we also need to work collaboratively with other parts of the Federal Government because there are some areas where we may not have expertise, but those other parts do.

Senator CORTEZ MASTO. OK.

Mr. CHOPRA. Senator, as you know, I've worked very frequently with the attorneys general on enforcement matters over the years, and I would also like to see us go beyond the attorneys general to other state officials who have unique expertise and authorities because that can be a different leverage point to make sure that taxpayer resources are being used effectively.

Senator CORTEZ MASTO. OK. And then how do you see the FTC continuing to work with the Consumer Financial Protection Bureau to take action against companies that intentionally mislead auto buyers, students, and elderly homeowners?

Mr. CHOPRA. Well, Senator, I'll start—

Senator CORTEZ MASTO. Lead off, and then I'll ask all of you.

Mr. CHOPRA. The CFPB and the FTC have an existing memorandum of understanding to coordinate enforcement matters as well as other tools in its toolbox. I think it's going to be especially

critical to coordinate with the CFPB on those specific special population issues as well as areas where there is co-extensive jurisdiction, including the Fair Credit Reporting Act, among other things.

Senator CORTEZ MASTO. And let me just ask Mr. Simons the same question.

Mr. SIMONS. Yes, I agree with Mr. Chopra.

Senator CORTEZ MASTO. And then—this is great. To the extent that I've seen this communication, bipartisan, everybody working together, but let me ask you, Mr. Simons, if you are the Chair, how do you incorporate the board members in everyday decisionmaking and enforcement in moving forward?

Mr. SIMONS. Yes. As far as I'm concerned, I would foresee this being "Team FTC." We are very fortunate that all the nominees have significant expertise, and some of it is very complementary, and I would want to definitely make use of that.

Senator CORTEZ MASTO. OK. Thank you very much.

Senator CAPITO. Thank you.

Senator Cruz.

**STATEMENT OF HON. TED CRUZ,
U.S. SENATOR FROM TEXAS**

Senator CRUZ. Thank you very much.

Congratulations to all four of the nominees. I spent 2 years at the FTC in the early 2000s, and it is a wonderful institution with tremendously talented career professionals and with a terrific and longstanding tradition of really effective bipartisan cooperation, enforcing the antitrust laws, defending competition, and protecting consumers. And so I want to commend each of you for your willingness to serve.

I'll note a number of you, we go back a long way.

Mr. Phillips, we've worked together the last 5 years with you doing very good work with Senator Cornyn. It's been a pleasure working with you. Sorry to see you leave us, but you're going on to do good things.

And, Mr. Simons, Ms. Wilson, we were all together with Tim Muris at the FTC, and it was a wonderful team. It was a pleasure working with the both of you each and every day for those 2 years. You both did, I think, an extraordinary job during your tenure there. And I think we were blessed to serve under Chairman Tim Muris, who was, quite frankly, extraordinary. I don't think there has been another Chairman before or since that had the scope and breadth and vision that Tim brought to that job every day.

So a question I wanted to ask, especially the both of you, because you worked with Tim every day, is, What positive lessons did you learn from your tenure working under Chairman Muris? And how would you expect to implement those lessons going forward, should you be confirmed?

Mr. SIMONS. Thank you, Senator. And let me just say I look very fondly back on those days, and that was clearly by far, by wide margin, the best job I ever had, and for all the reasons that you just described.

So one of the things, one of the most important things, I learned from Chairman Muris was that it's important to have your priorities, to communicate them well so that the staff knows what's ex-

pected, what types of matters will turn into enforcement actions, and so the staff is busy and doing very productive things and have very high morale. That's an absolutely critical thing I think in terms of leading the FTC, and that's my intent, to follow that lead from Chairman Muris.

Ms. WILSON. Thank you, Senator. I would echo Mr. Simons' comments. It was a pleasure to work with you and to get to know you then, and I've watched your career since then with great interest and support.

In terms of the things that I learned from Chairman Muris, first of all, I would echo what Mr. Simons said. It is very important to have a positive agenda. If you go in without a positive agenda, you are reacting to external forces and you are losing an opportunity to shape policy and to make important progress, frankly, in the mission of the agency.

Second, I would note, perhaps in a self-interested way, that Chairman Muris was very good at enlisting all of the Commissioners to help advance his positive agenda. I think it's important for Mr. Simons, if confirmed, to capitalize on the unique experiences and expertise that each of us bring to the table. And in the words of Mr. Phillips, that will be essentially a force multiplier for him and for the agency.

And third, I would note that Chairman Muris was excellent at advancing competition advocacy. He ensured that the FTC was a voice for free markets and for minimal regulation to the extent feasible, while still protecting consumers, both at the Federal level and at the State level. You, as head of the Office of Policy and Planning, played a very important role in some of those initiatives. And what Acting Chairman Maureen Ohlhausen has been doing is also very important in terms of economic liberty and working with state AGs to understand the hindrance that licensing requirements can impose.

And then taking that competition advocacy into the global arena as well.

Tim was there when we launched the International Competition Network. Having the FTC and the Department of Justice together in a leadership role speaking into the international arena and supporting the sound enforcement of competition and consumer protection laws is critical for American consumers and also for American companies.

Senator CRUZ. Mr. Simons, what are your views on competition advocacy and the robust role the FTC has had in that in the past?

Mr. SIMONS. I don't think I could do better justice to it than what Ms. Wilson just said. It's absolutely critical. It's had really tremendous effects historically. And I would expect that to continue into the future.

Senator CRUZ. Let me ask one final question, which is a number of members of this Committee are concerned about the scope and control of big tech.

Mr. SIMONS. Yes.

Senator CRUZ. That the size and power of it is unprecedented. There was an article just recently in *Esquire* that pointed out that Facebook and Google together are worth \$1.3 trillion, which you could merge the world's top five advertising agencies: WPP,

Omnicom, Publicis, IPG, and Dentsu; the five major media companies Disney, Time Warner, 21st Century Fox, CBS, and Viacom; and add also the five major communications companies: AT&T, Verizon, Comcast, Charter, and Dish; and you'd only get to 90 percent of what Google and Facebook are worth. The scope of market power and size and control of public discourse is unprecedented. How should the Commission approach this development, which I find unprecedented?

Mr. SIMONS. You know, it's a funny thing. It reminds me of when people used to—the old joke about when people would ask Jesse James why he robbed banks? It's because that's where the money is, right? And so with respect to antitrust, the corollary is the place most likely to have antitrust problems is places that have market power, right? And so those are the places you want to look the most, those are the places you want to make sure you're monitoring carefully and paying attention to, and if anticompetitive conduct is occurring there, that's where you get a big bang for the taxpayer's buck, by enforcement in those areas.

Senator CRUZ. Thank you.

Senator CAPITO. Thank you.

Senator Moran.

**STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS**

Senator MORAN. Chairman Capito, thank you very much. I appreciate the opportunity to have a conversation.

And I appreciate all of you visiting with me in my office yesterday.

I am also a member of the Appropriations Committee, which is responsible for the funding of the FTC. And as you are probably aware—and maybe I'll direct this at Mr. Simons—the FTC was allocated \$313 million for FY17, and earlier this week, the White House revealed its 2019 budget included \$309.7 million for the FTC, which is about \$3 million more than last year's budget request. As Congress attempts to appropriate the necessary resources for your agencies, what would you remind me to be prioritizing from your view?

Mr. SIMONS. So one of the things obviously, if confirmed, that I would do relatively quickly is get a handle on the budget and what the resource allocation looks like and also reach out to the staff and make sure I understand where the Commission's money is being spent and how well it's being spent.

In terms of the budgetary issues, you know, I don't know enough at this point to tell you that we need more or we could do okay with less. But, you know, my feeling at this point would be keep the ship steady.

Senator MORAN. To make sure I'm not stepping on toes, the Subcommittee that funds this is chaired by Senator Capito.

Senator CAPITO. Yes.

[Laughter.]

Senator MORAN. Let me—Mr.—Senator Blumenthal is here as well. He and I have recently submitted a letter to Acting Chairwoman Ohlhausen seeking an investigation into the deceptive and fraudulent practices that purport health plans increase their social

media presence among real users while actually selling fake followers and interactions. I would ask unanimous consent to submit that letter that Senator Blumenthal and I sent to the Chairwoman.

Senator CAPITO. Without objection.

Senator MORAN. Thank you.

[The letter referred to follows:]

UNITED STATES SENATE
Washington, DC, January 30, 2018

Hon. MAUREEN OHLHAUSEN,
Acting Chairman,
Federal Trade Commission,
Washington, DC.

Dear Acting Chairman Townhouse:

We write regarding the disturbing *New York Times* investigation over the weekend into Devumi, an American company that sells a panoply of social media actions, including followers, on some of the biggest social media websites, including Twitter and YouTube.¹ The company bills itself as a marketing company that can help clients increase their social media presence. In reality, the company allegedly uses bots to create fake social media accounts—evidently deceiving its own clients and creating tens of thousands of victims of a unique kind of social identity theft. This company seems engaged in unfair or deceptive practices, and we urge you to use all the tools at your disposal to take immediate action to investigate this company, along with any other similar services, and shut down any fraudulent practices they are engaged in.

Devumi's website—still live—offers any clients willing to pay a smorgasbord of social media influence: followers, retweets, and likes on Twitter; views, subscribers, likes, dislikes, and shares on Google's YouTube; plays, followers, likes, reposts, and comments on SoundCloud, the music-hosting site; followers, likes, and repins on Pinterest, the discovery and inspiration site; plays and followers on Vimeo; and followers and endorsements on LinkedIn, the professional networking site.

The advertising on Devumi's website belies its reported practice of purchasing bots to generate fake social media accounts and interactions. For example, regarding its YouTube related services, Devumi advertises, "100 percent Real Views from Real People."² Yet this is clearly not the case. According to data analysis by The Times, Devumi operates from "an estimated stock of at least 3.5 million automated accounts." Even worse, Devumi appears to be complicit in a massive social media identity theft operation. At least 55,000 of these accounts use "the names, profile pictures, hometowns and other personal details of real Twitter users, including minors."

Devumi's fraudulent practices are likely linked to widespread consumer harms. The inflated number of followers, retweets, and the like enabled by Devumi's services have the effect of distorting the online marketplace and creating a false sense of celebrity, credibility, or importance in people, companies, or institutions that may not deserve it.

As you know, Section 5 of the FTC Act (15 U.S.C. § 45) provides the FTC authority to bring enforcement actions against deceptive or unfair marketing practices. We urge you to use this statutory authority to investigate deceptive and unfair practices of these social media influencing services and take appropriate action. We respectfully request a response by February 14, 2018.

Sincerely,

JERRY MORAN
Chairman
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data
Security

RICHARD BLUMENTHAL
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, Insurance, and Data
Security

Senator MORAN. Section 5 of the FTC Act provides the agency enforcement authority to take action against deceptive or unfair marketing practices. And I feel strongly this practice needs to be

¹ <https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html>

² <https://devumi.com/youtube-views/>

investigated. What are some of the inherent consumer harms of allowing social media bots to be sold to individuals and companies? What kind of market distortions would you expect from this behavior? In other words, what's your take on the circumstances that, as reported in the press, of a young girl finding herself, her identity, being utilized in such a deceptive and damaging way?

Mr. CHOPRA. Well, sales and marketing is often more effective with more trust, and the extent to which these practices are undermining trust and how consumers are communicating back and forth with firms, that's obviously something we need to be concerned about. Deception has some specific legal criteria, so I look forward to reviewing your letter more closely and seeing how we can address that.

Senator MORAN. We will make sure that the letter is provided to all of you.

Anyone else? In the minute that I have remaining, I raise the topic that I raised with you in my office, and ask you again about the issue of bots. The legislation that was unanimously adopted designed to give our constituents access to quality tickets at face value, it's going to require enforcement, it's going to require, in my mind, someone being made an example of. And I wonder if any of you have reviewed the current actions of the FTC, have any suggestions about what can and should be done to make certain that the BOTS Act is enforced?

Ms. Wilson.

Ms. WILSON. I would say, Senator, that we are not yet privy to any nonpublic information, but we will, I am sure, if confirmed, agree on vigorously enforcing the law, following the facts where they lead, and making sure that violators face appropriate consequences.

Senator MORAN. Part of the opportunity I have in asking you questions today is to highlight at least this Senator's emphasis or priorities. And so while you may not be able to answer in detail the questions that I've asked you today, I hope that you take them as something that at least one member of this Committee thinks is valuable for you to pursue. And I thank you for your willingness to pursue public service, continue to pursue public service, and I look forward to your confirmations.

Senator CAPITO. Senator Baldwin.

**STATEMENT OF HON. TAMMY BALDWIN,
U.S. SENATOR FROM WISCONSIN**

Senator BALDWIN. Thank you, Madam Chair.

Thank you all for your time this morning and congratulations on your nominations.

I know that you have already been asked and each of you have answered questions relating to the Equifax breach as well as the priority that ought to be placed on data breaches in your work. I'm not going to re-ask those questions, but I want to use my prerogative to tell you that that is also a high priority of mine, and I was pleased to hear you all agree that this ought to be a high priority of the FTC and yours, if confirmed.

I want to begin by asking you about travel rating websites. A number of my constituents and many other Americans have fallen

prey to a tainted alcohol problem in Mexico. This has resulted in blackouts, reported robberies, sexual assaults, and deaths, over 140 to date that have been identified by some really excellent investigative journalism.

Mexican authorities have failed to address this issue. And the current State Department protocol for warning American travelers of these dangers is not working. In the alternative, many victims have turned to travel rating websites, like TripAdvisor, to report their experiences and to warn others who might be traveling to those areas and resorts.

Unfortunately, it has been reported that TripAdvisor has censored or taken down posts that detail these adverse experiences at these types of Mexican resorts. These actions are particularly concerning because TripAdvisor raises revenue through click-based advertising and hotel transactions, and so they might thus have an incentive to maximize positive reviews and minimize negative reports.

In November, I wrote to the Federal Trade Commission urging the agency to review these practices. I'd like to ask each of you, will you commit to looking into this issue and the impacts of the conduct of these types of websites on consumers if you are confirmed?

And why don't I start with you, Mr. Simons.

Mr. SIMONS. Sure, Senator, I would be happy to.

Senator BALDWIN. OK.

Ms. WILSON. Yes, I, too, would be happy to look into that, Senator.

Mr. PHILLIPS. Yes, Senator. It's scary enough to deal with those issues in-country. I can't imagine how your constituents must have felt in a foreign country dealing with those sorts of things.

Mr. CHOPRA. Yes. And if I can add, there are many issues we've seen over the past decade and beyond where there's a clear mismatch in incentives between consumer and an intermediary. We saw that firsthand in the mortgage crisis, we've seen it in other markets, and you're right to raise it, and my answer is yes.

Senator BALDWIN. Thank you. In my minute remaining, Mr. Chopra, I know that you have already been asked specifically about the student debt relief scams by Senator Hassan. I want to just add, given your professional history of advocating for student borrowers, if you can talk a little bit more about the coordination and how important it is for the FTC to coordinate, for example, with the Department of Education and other agencies to respond to and pursue these reprehensible actors.

Mr. CHOPRA. So there's no question that the FTC, the CFPB, and the Education Department have to tackle this together, along with state attorneys general. I would add, though, that when deploying these resources, we need to not just look at the symptom, but also the cause, and the cause of the proliferation of these scams is often due to subpar student loan servicing where borrowers are not given accurate information, they're deceived along the way, and we have to correct those fundamental problems. Otherwise, we will continue to see these scams go on and on and on.

Senator CAPITO. Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Madam Chair.

And I want to thank all of you for being here today. I appreciate it. We talked a little bit about this, Mr. Simons, when you were in my office yesterday I guess it was. But I want to kind of get all four of your opinions on it. And what it's about is concentration in the ag industry. And I know you guys don't deal with all of it. I think Justice deals with the commodities portion. But you do deal with fertilizer and chemicals, the way I understand it. And just for your reference, so you know, 80 percent of the beef in this country is basically the market is controlled by four companies, 60 percent pork, 50 percent chicken, and that's not what I would call very capitalistic in my book, and it makes me want to dig Teddy Roosevelt up and bring him back to life.

But, nonetheless, I want to know from each one of you if you think it's a problem, number one. And if you do think it's a problem, what can be done about it, if anything? Is the toothpaste out of the tube and we're just toast, or is this something we can actually do something about?

So I'm going to start with you. John? Joe? Joseph?

[Laughter.]

Mr. SIMONS. Joe. Joe. Call me Joe.

Senator TESTER. John is a good name, too, but Joe is good.

Mr. SIMONS. Yes, John is a really good name, too.

Senator TESTER. Yes.

Mr. SIMONS. Exactly, yes.

Senator TESTER. So just go ahead and shoot, and if you think it's a problem, say, yes, and tell me what we can do about it.

Mr. SIMONS. Well, so one of the things we talked about earlier on in the hearing today is doing a merger retrospective program to see if we have been too lax in our enforcement.

Senator TESTER. Mm-hmm.

Mr. SIMONS. And so one of the areas we might focus on or probably would focus on would be the ag area. So in terms—so that—

Senator TESTER. So if you find out you're too lax, does the Syngenta-ChemChina situation, does it have some impacts on that?

Mr. SIMONS. Yes, sure. Like any mergers that would come ahead, you know, in the future would be subject to—or not subject to, but would be—our analysis would be informed by the merger retrospective.

Senator TESTER. OK. But any mergers that's happened in the past, that's a done deal?

Mr. SIMONS. Generally, that's generally the case.

Senator TESTER. OK.

Mr. SIMONS. The other thing, too, is that not only could the current situation be a result of a consolidation, it could also be the result of anticompetitive unilateral practices, and we could look at those, too, and that if there were such cases, instances, of that, then what we would hopefully be able to do is to get an injunction, prohibit those anticompetitive practices, and maybe that would make the market more competitive going forward.

Senator TESTER. OK. Briefly, do you guys see it the same way? Go ahead.

Ms. WILSON. Yes, I do, Senator.

Senator TESTER. OK.

Mr. PHILLIPS. Yes, Senator.

Mr. CHOPRA. I would just add that the ability for people to sustain a livelihood in agriculture, making sure there are no illegal barriers to entry is critical.

Senator TESTER. Yes. Well, I would just tell you, and we talked about this a little bit, Joe, that my school, 40 kids in my graduating class, which isn't very big, it has been a long time ago now, 40 years ago, now the whole damn school has got 40 kids in it. And we've seen that kind of depopulation across rural America.

Now I want to ask you about another issue. And, by the way, I hope you're able to do that because I think when it comes to competition in the marketplace, whether it's selling it or whether it's the inputs you're putting on the crop, it is critically important. It will do away with family farm agriculture, and I'll tell you what, if family farm agriculture goes away, this country changes, and not for the better. That's just my two bits.

I was sitting in a Homeland Security meeting the other day, it wasn't classified, and my phone rang, and I thought, gosh, it's a 202 number, I better take it, and it was a telemarketer. OK? And I guess I shouldn't have taken it, but it could have been something important, and it wasn't, it was a nuisance. And I think we have far too many of these, and we have failed in this regard. So how can we stop this garbage from going on? I've got to tell you, I mean, I don't ask them to call me, they call me. If I want to buy a hotel room, I'll call them. OK? So how do we stop this?

Mr. SIMONS. Yes, Senator. I think the original Do Not Call rule was good at the initiation, but it has been overtaken by technological developments, and it doesn't work anymore, as we all experience. And so I think the answer is it's probably a technological solution. And I know that the FTC and the FCC are having conversations and working to explore that type of solution.

Senator TESTER. OK. Anybody else have any comments on that about some great ideas so when I get calls, it's from somebody that meant to call me and not just call a number?

Mr. SIMONS. Well, there are software solutions that are effective to a certain degree. I haven't tried them myself——

Senator TESTER. But I'm 61. That doesn't——

[Laughter.]

Mr. SIMONS. Yes, well, do you have children?

Senator TESTER. Yes. I've got kids. My grandkids could probably handle it.

Mr. SIMONS. Yes, there you go.

[Laughter.]

Senator TESTER. Yes. Anybody else want to comment on the Do Not Call stuff?

Mr. PHILLIPS. Senator, I'll comment. I would associate myself with what Mr. Simons said. There's no question that this needs to be a priority for us.

Senator TESTER. OK, good. Right behind the ag competition.

Mr. PHILLIPS. Right behind that.

[Laughter.]

Senator TESTER. OK. Thank you.

Mr. CHOPRA. It's a priority, but I'm worried about the resources and tools to solve it. And I think if we need more, we need to come to you and ask for it.

Senator TESTER. Amen, brother. I mean, you guys have got a job to do. If you don't have the dough to do it, we can't hold you accountable. So please do.

Thank you all very much.

Thank you, Madam Chair.

Senator CAPITO. Thank you all very much. I think that completes our first round. We're going to go to a brief second round. I had one additional question, and then Senator Blumenthal had several questions.

So mine is more of an education for me in terms of what FTC's role would be. Senator Hassan mentioned the addictive quality of computer gaming on the young minds. And my region of the country has had enormous issues with opioid addiction and the crisis that we see just cascading across the country.

So I guess my question, and I'm just sort of throwing this out there, does the FTC have a role in seeing that addiction is—which is considered a health issue—does addiction play into decisions that the Commission could or would make around certain products? And how do you see that? I don't know the answer, I'm just asking.

So, Mr. Simons?

Mr. SIMONS. Yes, so thank you, Senator. So this goes back a long way to dealing with the cigarette tobacco issues. Basically, you're talking about a population that is put in a very vulnerable situation where they potentially are misled about the product that they are buying and using, and then you have this addiction that attaches before they understand what's happened. And so that's a serious issue and something that sounds an unfairness.

Mr. CHOPRA. I would just add that addiction can lead to the conditions for very serious scams and fraud. With respect to opioids, you may know of some issues related to body brokering where certain individuals receive kickbacks or payments to refer addicts to specific rehabilitation facilities. There are, of course, issues with the adequacy of rehabilitation facilities and the representations they make to consumers. So it implicates a number of our authorities, but to be responsive, I don't believe addiction appears anywhere in the statutes that the Commission enforces, but if I'm confirmed, it's something that I know we'll need to tackle.

Senator CAPITO. Any other?

Mr. PHILLIPS. Senator, I agree with my colleagues. The only thing that I would add is addiction obviously creates fertile ground for folks to proffer solutions to consumers that are not really solutions, and that is an area that has long been a concern for the FTC. If confirmed, I commit to you to continuing that tradition, working with my colleagues and staff to focus on it.

Senator CAPITO. Well, I appreciate that in terms of where we're going with funding for treatment and other recovery programs and other kinds of addiction issues particularly around the opioid crisis. As we know, when you load a lot of money into a program, it becomes more fertile ground for the types of things that you were talking about. So thank you very much.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you, Senator Capito, and thank you for that last question, which I think raises a profoundly important topic. You may or may not know, but as state attorney general, I actually sued one of the major opioid manufacturers in the country, it happens to be a Connecticut company, because of, in effect, misleading or deceptive advertising. We led the Federal Government in that effort. Eventually we were joined by the Department of Justice, and the “we” was in fact eventually state attorneys general who joined in my action.

There is still ongoing, in my view, misleading and deceptive advertising surrounding powerful pain killers that can lead to opioid addiction and death as well as lasting damage to careers and lives and families. So I welcome your receptiveness, and I hope to work with, as a matter of fact, Senator Capito and you on ongoing solutions to this problem.

I want to come back to the bread and butter of the FTC, the Ninth Circuit’s decision in *FTC v. AT&T Mobility*. As all of you know, by virtue of your legal training, this decision enables companies to escape FTC authority and jurisdiction simply by purchasing a minor side business. It creates a major gap in your jurisdiction, “your” being the FTC’s jurisdiction, providing a common carrier service, even if it engages in all kinds of unfair and deceptive practices with a gap regarding the rest of its business. In effect, it means that Verizon, by virtue of purchasing Yahoo!, Verizon being a common carrier, Yahoo! being an edge provider, can simply escape enforcement of privacy and all kinds of other policies.

So I would like your commitment that you will continue the appeal of the Ninth Circuit’s really misguided decision here. I led an amicus brief in support of a rehearing, and I hope that you will pursue an appeal vigorously to protect your jurisdiction and protect consumers.

Mr. Simons.

Mr. SIMONS. Thank you, Senator. I fully expect that the Ninth Circuit en banc is going to reverse the lower court. So I’m very hopeful about that. And let me just say more generally that I think it would be a great idea if we got rid of the common carrier exception from the FTC Act entirely.

Senator BLUMENTHAL. That was my next question, and I hope all of the future Commissioners will agree on that point as well as on the vigorous appeal of the Ninth Circuit’s decision. I’m assuming by your nodding that you agree.

Mr. CHOPRA. I would also add that bipartisan Commissions over many years as well as the ABA Antitrust Section and others have advocated for repeal of the common carrier exception, and that seems like a good way to ensure there’s a level playing field.

Senator BLUMENTHAL. I want to ask, speaking of bipartisan, Mr. Simons, as the potential future Chair, you would agree, would you not, that the Commission should consist of five Commissioners, not just four, and that it should be bipartisan. Do you agree?

Mr. SIMONS. I didn’t turn my mic on. Yes, I agree, Senator.

Senator BLUMENTHAL. Mobile cramming. As you know, the unscrupulous practice of wireless carriers allowing third parties to add charges onto monthly bills without authorization by consumers, and in many cases, without consumers receiving anything

in return for those charges. The FTC has brought numerous enforcement actions. The FCC has done as well. I hope that all of you would commit to continuing that vigorous enforcement. And again by the nodding, I will assume assent and agreement.

I do want to ask a question about airlines. I understand it's not within your jurisdiction, but I am emboldened to ask this question actually by Senator Tester's reference to Teddy Roosevelt. You are not only legal enforcers, you also have a platform and a bully pulpit, and I hope that you will be consumer advocates when it comes to this industry as well.

A number of years ago, I asked for the Department of Justice to investigate potential collusion among the airlines in pricing. The Department of Justice announced that it would do so. We have yet to hear what the results, if any, are going to be. But I think I am not overstating the sense of frustration among many consumers by saying that they really feel they need a bill of rights that is stronger than the legal rights they have now, and partly it is the result of consolidation and mergers within the industry. I have opposed many, if not all, of them. And I would like your commitment that you will take a vigorous and pro-consumer attitude toward airline practices even though it is not in your jurisdiction.

Mr. SIMONS.

Mr. SIMONS. So, Senator, I'm a little reluctant to do that just out of a courtesy to the people at the Antitrust Division. I'm reluctant to do it particularly now because I would like to have very good relationships with them and very good coordination with them, and I really don't want to start off on a bad foot.

Senator BLUMENTHAL. Well, their jurisdiction is over mergers and antitrust policies.

Mr. SIMONS. Yes.

Senator BLUMENTHAL. Those mergers have already occurred—

Mr. SIMONS. Right.

Senator BLUMENTHAL.—unfortunately, over objections from consumer advocates who foresaw that consolidation, where I think it's now 85 percent of the capacity, is concentrated in four airlines. Ms. Wilson will correct me if I'm wrong on this point. And by the way, this is not personal, I hope you understand. I have great respect for Delta and its many, many employees. And this is an industry issue. And I'm raising the consumer issues because they are within your purview.

Mr. SIMONS. Well, if they're consumer issues within our purview, then it's appropriate for us to speak about it.

Mr. CHOPRA. Senator, my understanding is that the Transportation Department enforces laws with respect to unfair and deceptive practices in air travel. That being said, I do think there's a role for economists and researchers at the FTC, particularly when doing cross-industry comparisons and analyses, to show how certain types of actions taken by the agencies and what their results were. Looking at those tools and those models I think informs a lot of what both agencies do, and vigorously communicating those results I think can be very helpful to policymakers while still respecting the jurisdictions of our other agencies.

Senator BLUMENTHAL. Thank you.

Mr. Phillips, did you have—

Mr. PHILLIPS. Just one more thing to add, Senator. We have spoken a number of times in this hearing about our commitment to work with other Federal agencies when they have expertise over issues, and certainly that works both ways. If confirmed, at the FTC, I plan to make us a resource to those agencies on areas where we do have jurisdiction and do have expertise.

Senator BLUMENTHAL. I appreciate that comment.

And, Mr. Chopra, I appreciate your comment as well as your longstanding professional involvement in consumer advocacy, which has been very impressive. But going beyond—and I'll just finish on this point—the FTC being a resource, I'd also like you to be a champion. I think there's a real opportunity here for this new populism that we see sweeping the country to be articulated and, in fact, enforced through your advocacy going beyond your narrow legal jurisdiction. I understand it may not be within that legal jurisdiction, but you have the bully pulpit, you can bring the zeal and passion to consumer issues that no one else will do at the Federal level. And I'll just close with that hope. And I look forward to working with all of you. Thank you.

And I understand that there's a statement from the Congressional Antitrust Caucus that they wish to include. So I'll ask that be included for the record.

Senator CAPITO. Without objection.

Senator BLUMENTHAL. Thank you.

Senator CAPITO. Thank you.

[The information referred to follows:]

PREPARED STATEMENT OF THE CONGRESSIONAL ANTITRUST CAUCUS: HON. RICK NOLAN, CO-CHAIR; HON. MARK POCAN, CO-CHAIR; HON. RO KHANNA, CO-CHAIR; HON. DAVID N. CICILLINE, CO-CHAIR; AND HON. KEITH ELLISON, CO-CHAIR

Chairman Thune, Ranking Member Nelson, distinguished members of the Committee, thank you for the opportunity to submit a statement for the record for today's hearing on the nominations of Mr. Joseph Simons, of Virginia, Mr. Rohit Chopra of New York, Mr. Noah Joshua Phillips of Maryland, and Ms. Christine S. Wilson of Virginia, to be Federal Trade Commissioners.

In 1914, Congress established the Federal Trade Commission to promote, develop, and protect antitrust law and competition policy.¹ The Commission's independent, bipartisan structure and broad mandate to police "unfair methods of competition" reflected Congress' distrust of concentrated wealth, deep concern that existing law was inadequate to address rising economic concentration, and common belief that antitrust violations must be stopped before they gather momentum.²

We established the Congressional Antitrust Caucus out of recognition that this vision for preventing the concentration of economic power and protecting economic opportunity must be restored. For more than a century, Congress has routinely reformed and expanded the antitrust laws to reverse "a rising tide of economic concentration in the American economy" and to prevent the accumulation of economic and political power.³

¹Humphrey's Ex'r v. United States, 295 U.S. 602, 625–26 (1935) ("[T]he language of the act, the legislative reports, and the general purposes of the legislation as reflected by the debates, all combine to demonstrate the congressional intent to create a body of experts who shall gain experience by length of service; a body which shall be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or any department of the government.").

²Marc Winerman, *The Origins of the FTC: Concentration, Cooperation, Control, and Competition*, 71 ANTITRUST L. J. 74, 88 (2003), <http://www.ftc.gov/sites/default/files/attachments/federal-trade-commission-history/origins.pdf>.

³Brown Shoe Co. v. United States, 370 U.S. 294, 315 (1962) ("The dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy."); Robert Pitofsky, *The Political Content of Antitrust*, 127 U. PA. L. REV. 1051 (1979).

But today, economic power, wealth, and opportunity are becoming concentrated in fewer and fewer hands.⁴ There is mounting economic evidence that an overall decline in antitrust enforcement over the past several decades, coupled with wave after wave of mergers, has resulted in high levels of concentration in numerous industries with clear indicators of monopoly profits in key markets.⁵ The alarming result of growing consolidation throughout the U.S. economy is increased costs and fewer choices for consumers; wage stagnation and depression for workers; reduced private investment, innovation, and small business ownership, particularly among minorities; and diminished freedom and political agency due to the outsized influence of large corporations.⁶

We are in a monopoly moment. The Federal Trade Commission is on the front lines of reversing this trend. It must have every tool and resource necessary to reverse economic concentration and restore economic opportunity. Working Americans, small business owners, and innovators rely on the aggressive enforcement of the antitrust laws to prevent monopolists from squeezing them out and imperiling the American Dream.

It is noteworthy that Mr. Simons, who has been designated as the incoming Chairman, agrees that the Commission must address concerns that it has been “too permissive in dealing with mergers and acquisitions, resulting in harm to consumer welfare via increased prices, limited consumer choice, and harm to workers.”⁷ We look forward to hearing how Mr. Simons plans to make this evaluation, what his plans for fixing this failure will be, and how he will work to improve the Commission’s enforcement elsewhere. Most of all, we will hold Mr. Simons to his word to “determine the reason for such failure and to fix it.”⁸

We plan to continue our work to ensure that the Commission has the tools and resources necessary to achieve its competition mission. With these concerns in mind, we respectfully request that Members of the Committee consider the following questions to the nominees:

1. A large body of evidence suggests that lax merger enforcement has resulted in high levels of concentrations in numerous industries with clear indicators of monopoly profits in key markets.⁹ In 2016, for example, the White House Council of Economic Advisers found evidence of rising concentration in specific industries and across sectors of the economy. Professor John E. Kwoka of Northeastern University concluded last year that “broad changes in merger control policy at the Federal Trade Commission and the Antitrust Division at the U.S. Department of Justice have contributed to these outcomes.”¹⁰ What do you believe are the causes of these trends, and how should the Commission reverse them?
2. Landmark cases like *United States v. Microsoft* underscore the importance of effective monopolization enforcement in protecting competition, consumers, and innovation. How should the Commission reverse the decline in monopolization enforcement in recent decades?
3. Recent economic literature shows that anticompetitive behavior in the market for employment—such as monopsony power to set wages, collusion among em-

⁴See, e.g., Barry C. Lynn, CORNERED: THE NEW MONOPOLY CAPITALISM AND THE ECONOMICS OF DESTRUCTION (2011); John E. Kwoka, *U.S. Antitrust and Competition Policy amid the New Merger Wave* (July 2017), <http://cdn.equitablegrowth.org/wp-content/uploads/2017/07/25175704/072717-kwoka-antitrust-report.pdf>.

⁵Martin Gaynor, Kate Ho, Robert Town, *The Industrial Organization of Health Care Markets*, NATIONAL BUREAU OF ECONOMIC RESEARCH (Jan. 2014), <http://www.nber.org/papers/w19800.pdf>; THE AMERICAN ANTITRUST INSTITUTE, *A National Competition Policy* 1, 4 (Sept. 28, 2016), <http://www.antitrustinstitute.org/sites/default/files/AAINatlCompPolicy.pdf>.

⁶See, e.g., Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 HARVARD LAW & POLICY REVIEW 234 (2017); Marc Jarsulic et al., *Reviving Antitrust: Why Our Economy Needs a Progressive Competition Policy*, CENTER FOR AMERICAN PROGRESS 2 (June 2016); THE AMERICAN ANTITRUST INSTITUTE, *A National Competition Policy* 9 (Sept. 28, 2016); Joseph Stiglitz, *Inequality and Economic Growth*, THE POLITICAL QUARTERLY (Dec. 2015); Jason Furman, *Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth*, 6–7 (Sept. 16, 2016).

⁷*Nominations Hearing Before the S. Comm. on Commerce, Science, & Transportation*, 115th Cong. 16 (2018) (response of Mr. Joe Simons, Chairman Designate, to question for the record), https://www.commerce.senate.gov/public/_cache/files/6c4149af-3023-4825-90f1-3c38e279fd0d/6A0CCF409AF89DC8D5C0A84CE8730012.confidential-simons-committee-questionnaire-redacted.pdf.

⁸*Id.*

⁹See generally *supra* text accompanying notes 5 and 6.

¹⁰John E. Kwoka, *U.S. Antitrust and Competition Policy amid the New Merger Wave* 9 (July 2017), <http://cdn.equitablegrowth.org/wp-content/uploads/2017/07/25175704/072717-kwoka-antitrust-report.pdf>.

ployers, and the use of non-compete clauses in employment contracts—have created barriers to employment, mobility, and financial security for working Americans. For example, the White House Council of Economic Advisers reported in 2016 that limited competition among firms providing employment is a significant contributing factor to wage depression.¹¹ That same year, the antitrust agencies issued joint guidance for human resource professionals to promote competitive employment markets, which benefit employees “through higher wages, better benefits, or other terms of employment.”¹² In your view, how may the Commission build on this record to protect workers?

4. A growing number of international competition authorities have expressed concern that the concentrated control of consumers’ data may harm competition, innovation, and undermine consumers’ privacy online and offline. What is your view of the role of data in antitrust enforcement? Do you believe that incumbent firms with access to large swaths of consumer data discourage investment and competition?

Senator CAPITO. Well, given our hope to place these nominees on the Committee’s next markup, the hearing record will remain open until Tuesday, February 20. During this time, Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit their written answers to the Committee as soon as possible, but by no later than Monday, February 26.

So with that, I would like to thank the witnesses for not just your dedication to public service, but your very open and honest answers. I think we all have a great deal of confidence that has been expressed both with you and I think here in terms of the Committee.

So with that, I would say this hearing is now adjourned.
[Whereupon, at 12:05 p.m., the hearing was adjourned.]

¹¹ COUNCIL OF ECONOMIC ADVISERS, *Labor Market Monopsony: Trends, Consequences, and Policy Response* (Oct. 2016).

¹² DEPT OF JUSTICE, FEDERAL TRADE COMM’N, ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS (2016), <https://www.justice.gov/atr/file/903511/download>.

A P P E N D I X

November 3, 2017

Hon. JOHN THUNE,
Chairman,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Re: Nomination of Joseph J. Simons as Chairman of the Federal Trade Commission
Dear Senators Thune and Nelson:

We write, in our individual capacities, as former Chairs (as well as the current Chair) of the Section of Antitrust Law of the American Bar Association. The Section is the largest and best known global organization of lawyers devoted to competition and consumer protection issues, and we have long been a leading proponent of the importance of competition and consumer protection enforcement to our free economy. We write today, irrespective of party affiliation, in support of the nomination of Joseph J. Simons to be the next Chairman of the Federal Trade Commission. Mr. Simons has demonstrated an extraordinarily deep understanding of the most important competition principles throughout his career, enhanced by his commitment to sound enforcement during his years in public service. We are convinced that he will be an outstanding Chairman of the Federal Trade Commission.

Mr. Simons's record includes extensive scholarly work. His paper, co-authored with economist Barry Harris, entitled *Focusing Market Definition: How Much Substitution is Necessary?* 12 J. RES. L. & ECON. 207 (1989), introduced the concept of "critical loss," which has been central to merger analysis ever since. His many other publications and public presentations further confirm his status as a real scholar. But Mr. Simons also has strong practical understanding and capabilities, as he has demonstrated in handling many significant matters in his years in private practice. He even served, on nomination by the Justice Department, as the trustee of four wireless telephone businesses relating to the GTE/Bell Atlantic/Vodafone transaction.

Mr. Simons's public service at the Federal Trade Commission deserves special mention. He started at the FTC's Bureau of Competition in the late 1980s as Associate Director for Mergers and then Assistant Director for Evaluation. In these positions, he supervised a number of significant merger and non-merger matters. He returned to the FTC from June 2001 until August 2003 as Director of the Bureau of Competition under Chairman Timothy Muris. There, his accomplishments were truly notable:

- ☐ Bringing significant cases challenging unilateral conduct as unfair methods of competition in standard setting.
- ☐ Taking to trial the first reverse payments case, and aggressively pursuing the FTC's ultimately successful campaign to limit the use of reverse payments.
- ☐ Pursuing litigation and advocacy to prevent companies from harming competition by abusing litigation.
- ☐ Challenging restraints on competition that had taken advantage of unjustified state action immunity.
- ☐ Commencing a retrospective on hospital mergers and reviving the FTC's efforts to prevent anticompetitive hospital mergers despite years of losses under prior administrations.
- ☐ Bringing a case in the recorded music industry that resulted in an important ruling for the FTC on horizontal restraints in the Court of Appeals.
- ☐ Very importantly, insisting on rigorous economic analysis in all antitrust investigations.

□ And, significantly, managing a large staff effectively, maintaining excellent morale, and implementing competition policy in a nonpartisan manner.

For all these reasons and more, we all support the nomination of Mr. Simons. We do so based on his demonstrated excellence in understanding the law and economics of competition and consumer protection issues; his practical experience in representing important businesses; and his truly outstanding record in public service. We urge the Committee and the full Senate to approve his confirmation at the earliest opportunity.

Sincerely,

Jonathan M. Jacobson
Chair, 2017–18

James F. Rill
Chair, 1987–88

Alan H. Silberman
Chair, 1993–94

John DeQ. Briggs
Chair, 1995–96

Janet L. McDavid
Chair, 1999–2000

Co-Chair IBA Antitrust 2017–18

Roxane C. Busey
Chair, 2001–02

Kevin E. Grady
Chair, 2003–04

Joseph Angland
Chair, 2006–07

James A. Wilson
Chair, 2008–09

Allan Van Fleet
Chair, 2010–11

Theodore Vorhees, Jr.
Chair, 2012–13

Howard Feller
Chair, 2014–15

William C. MacLeod
Chair, 2016–17

Harvey M. Applebaum
Chair, 1980–81

Irving Scher
Chair, 1988–89

Caswell O. Hobbs
Chair, 1994–95

Phillip A. Proger
Chair 1998–99

Ky P. Ewing, Jr.
Chair, 2000–01

Robert T. Joseph
Chair, 2002–03

Richard J. Wallis
Chair, 2004–05

Kathryn M. Fenton
Chair, 2007–08

Ilene Knable Gotts
Chair, 2009–10

Richard M. Steuer
Chair, 2011–12

Christopher B. Hockett
Chair, 2013–14

Roxann E. Henry
Chair, 2015–16

ENTERTAINMENT SOFTWARE ASSOCIATION
February 20, 2018

VIA ELECTRONIC MAIL

Hon. JOHN THUNE,
Chairman
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Committee on Commerce, Science, and
Transportation,
United States Senate,
Washington, DC.

Re: Nomination Hearing for Federal Trade Commissioners (February 14, 2018)

Dear Chairman Thune and Ranking Member Nelson:

Thank you for the opportunity to submit evidence into the record as part of the Committee's consideration of the Federal Trade Commissioner nominees.

The Entertainment Software Association (ESA) represents the public affairs needs of companies that publish computer and video games in the United States for game consoles, handheld devices, personal computers, and the Internet. While our industry is well known for entertainment products that bring joy to millions of con-

sumers, researchers have begun to tout the educational, mental health, and rehabilitative benefits that video games produce.¹

The Federal Trade Commission (FTC) plays an important role in promoting consumer protection and has, on several occasions, lauded our industry's self-regulatory practices. These efforts date back to 1994, when our industry founded the Entertainment Software Rating Board (ESRB) to provide consumers—especially parents—with critical ratings information to guide purchasing decisions. When concerns about media marketing practices to children arose not long thereafter, the FTC conducted a series of regulatory reviews, spanning from 2000 to 2013. Having conducted eight such reviews, the FTC repeatedly reported that the ESRB “continues to have the strongest self-regulatory code” among the film, music, and video game industries.² The ESRB has since expanded its ratings program from physical products to digital games and mobile apps.³ Among other things, the ESRB rating disclosures for digital games indicate whether a game includes the ability to identify a user's location, enables user-to-user communications, provides unrestricted Internet access, or allows digital goods to be purchased.⁴

During the questioning of the FTC nominees at the February 14 hearing, Senator Maggie Hassan raised concerns over the continued efficacy of the industry's self-regulatory efforts. Relying in part on a proposal by the World Health Organization (WHO) to adopt “gaming disorder” as a diagnosable disorder,⁵ Senator Hassan maintained that in-game purchases, including so-called “loot boxes,” might lead to addictive behavior by children.

Putting aside the fact that the WHO's proposed classification does not address in-game purchases, we would respectfully suggest that the significant weight of scientific evidence does not support the claim that video game play leads to addiction. In 2013, for example, the American Psychiatric Association (APA) declined to include a diagnosis for “gaming disorder” in its *Diagnostic and Statistical Manual of Mental Disorders*,⁶ concluding that there was insufficient evidence to classify any level of video game play as a formal disorder. To date, the APA has not changed its determination. Furthermore, in 2016, a group of academic researchers criticized the WHO proposal for a lack of consensus of the symptoms that might lead to such a diagnosis and worried that it might stigmatize ordinary game play, leading to unwarranted public policy changes.⁷ More recent ly, thirty-six academic researchers warned against labeling video game play as addictive, “given the gravity of diagnostic classification and its wider societal impact . . . and the low quality of the existing evidence base.” Instead, these experts urged the medical community to focus on treating the “underlying issues such as depressive mood or social anxiety first.”⁸

Our industry takes seriously its responsibility to keep consumers informed with comprehensive and essential ratings information and continually works to ensure that its practices meet consumer needs and expectations. We stand ready to work with this Committee to provide any additional information it might find helpful on this issue.

Sincerely,

STANLEY PIERRE-LOUIS
Senior Vice President and General Counsel,
Entertainment Software Association.

¹ See Molecifar Psychiahy, “Playing Super Mario Induces Structural Brain Plasticity: Gray Matter Changes Resulting from Training with a Commercial Video Game” (2014), link available at: <https://www.medscape.com/viewarticle/814050>.

² See FTC Repo11 to Congress, “Marketing Violent Entertainment to Children” (April 2009), available at: <https://www.ftc.gov/sites/default/files/documents/reports/marketing-violent-entertainment-children-sixth-follow-review-industry-practices-motion-picture-music/p994511violent-entertainment.pdf>.

³ International Age Rating Coalition, available at: <https://www.globalratings.com/>.

⁴ See ESRB Ratings Guide, available at: <http://www.esrb.org/ratings/ratingsguide.aspx>.

⁵ It is worth noting that the WHO has not yet adopted “gaming disorder” as classification in its update to the International Classification of Diseases (ICD-11), which was recently released as a beta draft. See World Health Organization, “Gaming Disorder” (Jan. 2018), available at: <http://www.who.int/features/qa/gaming-disorder/en/>.

⁶ See *Psychology Today*, “Internet Gaming Disorder in DSM-5: A Disorder for Further Study” (July 18, 2014), available at: <https://www.psychologytoday.com/blog/here-there-and-everywhere/201407/internet-gaming-disorder-in-dsm-5>.

⁷ See ResearchGate, “Scholars’ Open Debate Paper on the World Health Organization ICD-11 Gaming Disorder Proposal” (Dec. 12, 2016), available at: https://www.researchgate.net/publication/311981176_Scholars'_open_debate_paper_on_the_World_Health_Organization_ICD-11_Gaming_Disorder_proposal.

⁸ See PsyArXiv, “A Weak Scientific Basis for Gaming Disorder: Let Us Err on the Side of Caution” (Feb. 8, 2018), available at: <https://psyarxiv.com/kc7r9>.

AMERICAN COATINGS ASSOCIATION
Washington, DC, February 26, 2018

Hon. JOHN THUNE,
 Chairman,
 Committee on Commerce, Science, and
 Transportation,
 United States Senate,
 Washington, DC.

Hon. BILL NELSON,
 Ranking Member,
 Committee on Commerce, Science, and
 Transportation,
 United States Senate,
 Washington, DC.

Dear Chairman Thune, Ranking Member Nelson, and Honorable Members of the Committee:

I am writing to you on behalf of the members of the American Coatings Association (ACA) and the more than 250,000 employees in the paint and coatings industry, to urge your swift confirmation of the President's four nominees to the Federal Trade Commission (FTC): Mr. Joseph Simons, Mr. Rohit Chopra, Mr. Noah Joshua Phillips, and Ms. Christine S. Wilson.

For some time now, the FTC has been operating with only two commissioners and this has severely hampered the agency's ability to carry out its work. These unprecedented vacancies have created obstacles to the ability of the agency to protect consumers from anticompetitive, deceptive, and unfair business practices while unduly burdening legitimate business activity. ACA has worked closely in the past with the Federal Trade Commission on developing industry-wide guidelines for the ever-evolving issues that impact our industry; however, more recently, the agency has moved away from the adoption of consistent industry-wide standards in favor of a case-by-case approach. It is clear to us that industry-wide guidelines provide certainty to industry members and are the most effective in protecting consumers from deceptive and unfair business practices. ACA believes that the agency will be better equipped to fulfill its mission of protecting consumers without unduly burdening legitimate business activity with a full slate of commissioners.

It is for these reasons that ACA asks you to move forward swiftly with the approval of these nominees so that the FTC can get back to working on the important issues necessary to preserve a fair marketplace, for which they are charged.

If you have any questions at all, please do not hesitate to contact me directly.

Best regards,

HEIDI K. MCAULIFFE,
Vice President, Government Affairs.

CHRIS W. K. FETZER, DENTONS US LLP

Statement for the Record

Jewelers of America is the national trade association for retailers, manufacturers, and suppliers serving the fine jewelry marketplace, with over 3,000 member firms representing over 50,000 employees. Because almost all materials used to create finished jewelry products arrive at a U.S. manufacturer in rough and raw form, significant work is required by U.S. manufacturers to make saleable finished jewelry products. Under existing FTC standards, the point of origin of materials needed to manufacture a piece of jewelry is the only consideration when determining whether or not that piece of jewelry can be labeled "Made in the USA."

Question for the Record

In determining whether jewelry manufactured in the U.S. can be labeled "Made in the USA," the FTC uses the "All or Virtually All" standard. This standard is based solely on the point of origin of materials used in the jewelry. However, U.S. Customs and Border Protection uses the "Substantial Transformation" standard to make the same labeling determination, which is the standard used by other U.S. Federal agencies and foreign government agencies. Accordingly, if a jewelry firm in Massachusetts manufactures a piece of gold jewelry for a customer outside of the U.S., it must be labeled "Made in the USA" in all export and U.S. Customs documentation. This labeling requirement has international tax implications as well. An identical piece of gold jewelry shipped by the same U.S. manufacturer to a U.S. customer cannot be labeled "Made in the USA" based on FTC standards.

What is the FTC's justification for imposing a standard on the U.S. jewelry industry that conflicts with standards used by other U.S. Federal agencies?

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
JOSEPH SIMONS

Question 1. There are a growing number of voices calling for responsible Federal Trade Commission (FTC) reforms, including those detailed in the transition report of the American Bar Association. How do you view the following proposed reforms:

Answer. While the FTC must couple its Civil Investigative Demands (CIDs) with “resolutions” describing the investigation, the FTC has made a practice of issuing general, non-specific resolutions that some view as too vague to justify its CIDs. This can lead to overly broad investigations that lack focus and increase costs and burdens on business. What are your views on adopting a more targeted use of CIDs?

Answer. I am in favor of issuing resolutions that describe the investigation in as specific terms as are reasonably practical at the time of issuance.

Question 1a. CIDs also require approval from only one Commissioner. What are your views on the FTC ensuring that all Commissioners are notified before a CID is issued, so that the Commissioners can raise objections or otherwise act as a check in the process?

Answer. This suggestion is certainly worth considering, but does carry with it the possibility, or even likelihood, of substantially delaying investigations, which would need to be avoided.

Question 1b. The FTC can avoid the formality of obtaining a CID in a non-merger matter by issuing “Access Letters” to companies instead, which are often substantially similar to CIDs in composition and burden. While these are “voluntary” requests for information, companies typically feel compelled to comply. What are your views on the FTC’s use of “Access Letters” as a means of avoiding issuance of a CID for non-merger investigations?

Answer. Access Letters can be a useful tool when used in the correct way. They should be generally used to obtain preliminary information useful to a determination of whether fuller investigation is appropriate. This approach can involve a lower burden on both FTC staff and the parties, and can be more efficient.

Question 1c. Although the issuance of the CID is confidential, a company seeking to quash or modify a CID must do so publicly. This exposes the existence of the investigation, potentially leading to public scrutiny. Thus, companies may avoid challenging CIDs they view as unfair to avoid the possible reputational harm associated with publicizing an investigation. What are your views on a company’s ability to seek to quash or modify a CID without such petitions being made immediately public?

Answer. This is a suggestion I am willing to explore, if confirmed.

Question 1d. The FTC has been criticized for seeking permanent injunctions in its consent decrees without demonstrating a “cognizable danger of recurring violation.” What are your views on the FTC obtaining permanent injunctions only where it can show “some cognizable danger of recurring violation”?

Answer. I understand the concern. But since the question here is limited to matters settled by consent, the situations involved are all negotiated agreements, and thus there would be no opportunity to make any kind of formal showing of the type suggested. However, the Commission must always be mindful that the remedy it agrees to in a consent order is appropriate.

Question 1e. What are your views on the FTC adopting a more fact-specific and tailored approach to the standard length of 20 years for consent decrees?

Answer. If confirmed, I would like to consult with the career staff at the Commission as well as the other commissioners before coming to a view on this issue.

Question 1f. What are your views on instituting a process to expedite reconsideration of consent decrees older than 10 years?

Answer. I would be open to instituting such a process, but would like to confer with the staff at the Commission and my fellow commissioners.

Question 1g. What are your views on the FTC’s Bureau of Economics issuing routine public statements providing a highlevel description of its economic analysis and rationale for consumer protection enforcement actions?

Answer. Public transparency regarding the methods used by the FTC is always helpful, but I believe the better approach is for the Commission itself to issue as much guidance as reasonably possible, which would combine inputs from both the Bureau of Economics and the Bureau of Consumer Protection.

Question 2. Regardless of your answers to the above questions, would you support the FTC conducting a workshop with stakeholders to examine these and perhaps other potential reforms that results in a report with recommendations for action?

Answer. Yes, I would support a workshop on at least some and perhaps all of these issues.

Question 3. Where a merging party has filed for merger review under Hart-Scott-Rodino and has been unable to come to terms with the FTC, what are your views on the FTC voluntarily foregoing seeking a preliminary injunction and instead working with the merger parties to combine a preliminary injunction with a permanent injunction in Federal Court as has been recommended by the bipartisan Antitrust Modernization Commission?

Answer. This sounds like a worthwhile approach, and if confirmed, I would be interested in examining it further.

Question 4. Given the proliferation of competition enforcers in the world today and the fact that data privacy laws are actively being revised and enforced in foreign countries, what role should the FTC play in relation to its counterparts in foreign jurisdictions? Additionally, what are your views on how the FTC can be a better proponent for the U.S. approach to antitrust and privacy in foreign jurisdictions?

Answer. The FTC has for many years worked in close partnership with the Department of Justice Antitrust Division in advocating for sound competition enforcement around the globe, and the FTC itself has been very active in international settings promoting strong but sensible privacy policies. Given the growing presence and significance of foreign authorities in these areas, such advocacy becomes even more important over time. The best tool here is constant and constructive engagement with foreign authorities, including partnering with other like-minded foreign authorities to emphasize the benefits of such an approach.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
JOSEPH SIMONS

Question 1. To the best of your knowledge, please describe the FTC's ongoing activities related to identifying counterfeit lenses produced by Asian manufacturers.

Answer. I do not have access to non-public investigations that may be ongoing at the FTC, and I am not aware of any public investigations. But I am aware the Department of Justice has obtained a plea agreement from the owner of Candy Color Lenses, who was sentenced to significant jail time. This DOJ investigation is part of Operation Double Vision, a multiagency effort including FDA, U.S. Postal Inspection Service, and U.S. Immigration and Customs Enforcement.

Question 2. To the best of your knowledge, please describe the FTC's interactions with the FDA related to post-market surveillance of contact lenses.

Answer. Although FTC does coordinate with FDA on a variety of issues, I am not aware of FTC interacting with FDA on post-market surveillance of contact lenses.

Question 3. To the best of your knowledge, what percentage of contact lens wearers in the United States have filed complaints with the FTC?

Answer. I am not aware of what percentage of contact lens wearers in the U.S. have filed complaints with the FTC.

Question 4. What other Class III medical devices does the FTC regulate through specific rules (*i.e.*, pacemakers, implants, etc)?

Answer. I am not aware of any.

Question 5. Many online companies are engaging in targeted advertising. Using consumer data, companies can target what they deem to be the most relevant ads to consumers. Should there be more transparency into how the algorithms behind targeted advertising work so that consumers can see how they are being targeted for certain messages?

Answer. I would be happy to look into this issue if confirmed.

Question 6. Would third party audits of algorithms be a reasonable way to ensure the algorithms are doing what companies claim and not harming competition or consumer choice? Is this something the FTC might consider looking into?

Answer. I would be willing to consider looking into this issue if confirmed.

Question 7. In 2007, when asked about monitoring domination in the advertising intermediation market and its impact on competitiveness, the FTC indicated that it would "carefully review" any attempts to manipulate products to any one entity's advantage. However, a decade later we are seeing platform dominance that is allowing a single entity to shape what products consumers see—and by that matter—access. This may be a problem for consumers looking for short-term loans online. If confirmed, under your leadership, what would the FTC do to ensure consumer choice in the online lending markets?

Answer. The FTC enjoys broad authority to protect consumers from unfair or deceptive acts or practices, as well as to protect markets from unfair methods of competition. The goal of both is to assure that consumers are treated fairly, and enjoy as much choice as freely competitive markets can provide. If confirmed, I will confer with staff and fellow commissioners regarding online markets, including platform dominance in order to get a sense for what needs to be done to keep these markets free and fair.

Question 8. The Federal Trade Commission routinely reviews mergers between companies across a host of industries to help make sure that they do not adversely affect competition. This process can result in the Commission blocking a merger or approving it only if the parties agree to certain remedies to mitigate any potential anti-competitive effects. In this process, the Commission has the authority to pursue legal options to enforce a ruling, including administrative proceedings or pursuing an injunction in Federal court.

I understand that for years standard practice was for the FTC to file for an injunction in addition to commencing an administrative proceeding under so-called “Part 3” of the FTC Act so that the party proposing the merger would have an early “day in court” the same way that it would if the merger investigation had been undertaken by the Department of Justice. I am aware of at least one case recently where this did not happen.

If confirmed and a merger were to come up for a vote during your tenure and the majority of Commissioners decided the merger shouldn’t proceed (at least not without remedies), would you commit to making sure that the FTC files for an injunction in Federal court, to make sure that the parties have the same chance to defend the merits of the deal in court as they would if the merger had been reviewed by the Department of Justice?

Answer. It is important that as a nominee, and potential Commissioner, I do not prejudge any case or party, but I am happy to discuss the issue of merger enforcement generally. There are benefits to the Commission’s administrative litigation path, including providing the Commission an opportunity to develop important questions of law. That being said, it should be used on the merits, and not to the disadvantage of any party, such as running out the clock. For example, if the FTC is denied a preliminary injunction in a merger matter, I do not believe the Commission should pursue that matter in administrative litigation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROY BLUNT TO
JOSEPH SIMONS

Question 1. How does your experience in antitrust prepare you to lead the FTC in determining cases related to data protection and privacy?

Answer. I know the agency very well from two previous stints with the Commission, when I developed a reputation as a vigorous enforcer. I have every intention of maintaining that reputation with respect to both the FTC’s competition and consumer protection missions. If confirmed, I will work diligently with the outstanding staff at the FTC to make sure the Commission continues to aggressively protect consumers from deceptive or unfair acts or practices, including with respect to privacy and data security.

Question 2. Do you have any recommendations for stakeholders involved in the data breach debate that may help both industry and government entities find common ground on solutions?

Answer. The FTC has a long tradition of inviting contribution and comment from stakeholders across industry, both inside and outside of government, when tackling the most difficult challenges confronting the agency. If confirmed, I will encourage all interested stakeholders to continue to participate and engage with the FTC as we study these issues and develop an enforcement agenda.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JERRY MORAN TO
JOSEPH SIMONS

Question. The Federal Trade Commission (FTC) brought an enforcement action in July 2014 against a secondary market ticket provider and some of its “private label” partners. In this particular case, the FTC found that the “private label” partners were misleading consumers to believe that they were actually buying tickets directly from the venue and directed the private labels to engage in more disclosure. In other words, the FTC was not troubled by the development of the “private label”

markets, but instead with the deceptive acts of the private labels in this particular case. Do you read this case in the same way?

Answer. As online markets continue to develop, the emergence of private labels, in and of itself, is not necessarily problematic. We have seen such private label arrangements in many industries for some time. However, to the extent that these private labels engage in deceptive or unfair conduct, I will commit to pursuing enforcement to protect consumers and ensure the integrity of online markets.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
JOSEPH SIMONS

Question 1. As a former Attorney General of Alaska, I always appreciated coordination with Federal agencies where appropriate, and the opportunity to communicate solutions that made the most sense for Alaskans. Given the importance of state attorneys general to the FTC's antitrust enforcement, please describe your views on the working relationship between the FTC and state attorneys general.

Answer. A strong working relationship between the FTC and state attorneys general is critical to the FTC's ability to most efficiently and effectively fulfill its mission.

Question 2. As you know, the state I represent is unique which means its problems are unique and require unconventional solutions. In a highly rural state like Alaska, many communities are not connected by roads, challenging weather conditions prohibit timely delivery of mail and other essential services, and quality connectivity is considered a luxury. One of your objectives at the Commission is consumer protection and education. How will you ensure that rural constituents like mine have the tools they need to make informed decisions and in cases of abuse that require follow up, for example data breaches or identity theft, the information necessary to mitigate risks and resolve the issue?

Answer. The FTC has long committed itself to consumer education and engagement. I absolutely appreciate that this becomes more difficult for citizens in rural areas, and if confirmed, I will confer with staff, including those posted in our regional offices, and take a hard look at how the agency can assure that consumers of all regions and ways of life have access to the tools the FTC provides.

Question 3. In your prepared statement, you discuss anticompetitive consolidation, which immediately called to mind the enormous market capitalization of tech companies. Recent calculations value the four largest tech companies' capitalization at \$2.8 trillion, which is a staggering 24 percent of the S&P 500 Top 50, close to the value of every stock traded on the Nasdaq in 2001, and to give a different perspective, approximately the same amount as France's current GDP. Press reports have also noted allegations of increased anti-competitive behavior by some of these companies. Is there a point at which these companies are simply too big from an antitrust standpoint?

Answer. Under the antitrust laws, big is neither necessarily bad, nor necessarily good. It can be good, it can be bad, and it can be both at the same time. Often, big companies get big by producing good products or services at low prices. If that is the case, the FTC should not interfere. If, however, companies get big—or, just as importantly, stay big—through anticompetitive conduct, then the FTC should intervene to stop such conduct and protect competition and consumer welfare.

Question 4. As Chairman, is there a former FTC Chairman that you admire and believe set forth the right vision and policies at the FTC? Who and why?

Answer. I have had the great fortune to learn from two former FTC Chairmen, Bob Pitofsky and Tim Muris. As a law student, I studied with Chairman Pitofsky at Georgetown University Law Center, played basketball with him in the weekly student faculty basketball games, and of course, observed his work as Chairman from outside the agency. With respect to Chairman Muris, I observed him from inside the agency as his Director of the Bureau of Competition. Both men exemplified the best of what an FTC Chairman should be—they demonstrated commitment to the agency's mission, the highest degree of skill in the law, and unmatched knowledge of how to successfully run the Commission. Each had his own approaches and priorities, but each approach was bipartisan at the core, required active, vigorous enforcement, and the maintenance of high staff morale.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEAN HELLER TO
JOSEPH SIMONS

Question. When Congress passed the Fairness to Contact Lens Consumers Act in 2003, it was a pro-consumer measure that ensured consumers automatically receive a copy of his or her prescription after an eye exam—without having to ask for it, pay an additional fee, or sign a waiver. Do you agree that consumers should receive copies of their prescriptions as Congress intended so that they can use the prescription to purchase their contact lenses from a source of their choosing?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JIM INHOFE TO
JOSEPH SIMONS

Question 1. The Federal Trade Commission routinely reviews mergers between companies across a host of industries to determine any antitrust implications. This process can result in the Commission requiring certain remedies to mitigate any impacts the Commission believes the merger would have on competition in the marketplace. Furthermore, should the Commission deny a merger, the Commission has the authority to pursue legal options to enforce a ruling, including administrative and Federal district court proceedings. Legal proceedings, even when necessary, are costly, for both the Commission and the companies involved and can drag on for an extended period of time. Lengthy legal proceedings create uncertainty for the companies involved and in some cases result in a merger being blocked not on its individual merits but because the clock ran out on the proposed merger.

As a Commissioner, you will have a role in determining any and all potential legal proceedings that would result from a decision by the Commission. Do you believe that legal proceedings should focus on the merits of the matter before the Commission?

Answer. Yes.

Question 2. Furthermore, what policies or procedures do you believe the Commission can implement to ensure legal proceedings focus on the merits of the matter and are not used to “run out the clock” on a merger?

Answer. If the Director of the Bureau of Competition is properly supervising the career staff, this should not happen. And in any event, the Chairman should ensure that running out the clock does not occur. If confirmed, I will make sure this does not happen, and would encourage parties to notify me if they believe it is occurring.

Question 3. If a party to a matter before the Commission believes legal proceedings are being used to “run out the clock” on a merger, what remedies can be used by that party to address this issue?

Answer. First, notify the Director of the Bureau of Competition, and if not successful, the Chairman.

Question 4. In a more general sense, how can the FTC work to ensure its merger reviews are resolved in a timely manner and that its merger investigation process takes into consideration both short and long term impacts to industries and consumers?

Answer. If confirmed, I intend to conduct a review of the merger investigation process. Merger investigations are now averaging close to 12 months, up from 6 months or so just a half-decade ago. The Commission should reform the process to push back the length of investigations closer to the six month level. The current status is bad for competition, bad for the acquired company and bad for the FTC. It keeps target companies in limbo for too long, increasing uncertainty and causing loss of customers and employees—both of which are bad for competition. With respect to the FTC itself, the current length of investigations essentially dilutes the Commission’s resources. If time for investigations were reduced to six months, the Commission would be able to handle roughly twice as many merger investigations or use the freed-up resources for more non-merger enforcement.

Question 5. The Federal Trade Commission plays a key role in investigating consumer complaints and has a number of tools at its disposal to promote fair competition in the market place. These tools range from educational efforts to imposing overly burdensome rules.

When considering how to respond to consumer complaints, do you believe the Commission has the guidelines or internal metrics necessary to determine an acceptable threshold for the increased costs associated with its rule makings or other remedial actions?

Answer. Yes. The FTC has a large staff of Ph.D. economists capable of economic analysis along these lines.

Question 6. Should the Commission be required to consider less burdensome alternative options in certain circumstances, such as when the total number of complaints is a very small percentage of business transactions?

Answer. In general, the Commission should strive to minimize burdens to the extent this does not materially diminish its enforcement efforts. While the agency should focus its enforcement resources on matters involving substantial harm to competition and consumers, the number of complaints is not always a useful metric in determining whether unfair or deceptive acts or practices are occurring.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
JOSEPH SIMONS

Question 1. The FTC is a relatively small agency that has to effectively use its resources to cover a very broad jurisdiction. In this regard, as a matter of discretion, it may be wise for the FTC to pursue enforcement cases involving practices that result in substantial harm. However, substantial harm is not a legal requirement under section five of the FTC Act—cases involving deception do not require harm at all, and cases involving unfairness can involve harm that is prospective and/or non-financial. Consequently, it is very important that commissioners do not stringently require types of harm as a legal test for agency enforcement actions. This principle is particularly important because Lab MD is challenging the FTC's legal authority to bring enforcement actions for data breaches based on the lack of requisite harm. As a commissioner, will you pledge to not require substantial harm or financial harm as legal tests for FTC enforcement actions?

Answer. If confirmed, I commit to pursue bipartisan efforts to bring enforcement actions for both unfair or deceptive acts or practices. I anticipate that actionable harms will include financial harms, as well as non-financial ones, and look forward to working with fellow commissioners to further define the outer parameters of what constitutes harm under the FTC Act, including for data breaches.

Question 2. The FTC's Bureau of Economics provides valuable insight and analysis that supplements the FTC's work. However, the FTC is, first and foremost, a law enforcement agency, not a regulatory agency. As such, economic analysis should play a complementary role, not a dispositive one. The FTC should enforce the FTC Act and the other laws under its jurisdiction according to legal doctrine, not economic analyses. As a commissioner, will you pledge to continue to further the FTC as a law enforcement agency in which the Bureau of Economics and economic analyses play a complimentary role, not a dispositive role? Will you pledge to enforce the law according to legal precedent?

Answer. If confirmed, I commit that under my leadership the FTC will enforce the FTC Act as written and according to legal precedent. The FTC has a rich bipartisan tradition of including economic analysis as an important part of both competition and consumer protection matters, and I plan to use it to support vigorous enforcement in pursuit of both missions.

Question 3. Piracy continues to be a problem that plagues content providers. The Internet is filled with websites that provide pirated content and entertainment at the expense of the companies that produce the content. Moreover, many of these websites can harm consumers with unsafe or even fraudulent data and commercial practices. What can the FTC do to crack down on the illegal piracy of American entertainment and content?

Answer. There are several things the FTC can do. First, it can energetically enforce all laws that Congress has passed in order to address these concerns, including actions against spyware and malware offenses that often attend pirated material. Further, it can and must work with each of the many other Federal agencies empowered to police unsafe and fraudulent data and commercial practices. Additionally, the FTC can continue its long and successful tradition of business and consumer education and guidance, as well as policy advocacy, such as with workshops and resources provided through the FTC website.

Question 4. Fraudulent websites can deceive consumers by masquerading as legitimate hotel websites. Consumers who are fooled by these sites reserve rooms that do not exist or turn out to be different from what they reserved online. According to industry statistics, this particular fraud affects millions of consumers a year and costs the hotel industry hundreds of millions of dollars. I wrote former FTC Chairwoman Edith Ramirez about this issue in June 2015. Will you pledge to ensure that the FTC will work with other law enforcement entities (such as state attorneys general) to bring enforcement actions against fraudulent hotel websites?

Answer. Yes.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
JOSEPH SIMONS

Question. I was a cosponsor of the Better Online Ticket Sales (BOTS) Act that prohibits ticket scalpers from using bots and other online measures to deliberately circumvent security protocols that limit or restrict online ticket purchases. Enforcement action against bad actors in the ticketing market would help deter people from using bots.

Mr. Simons, will you commit to looking at this issue and pursuing enforcement actions against bot users?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
JOSEPH SIMONS

Question 1. What experience do you have working with State Attorneys General? What are your views regarding the Commission working with state law enforcement?

Answer. During my tenure as Director of the Bureau of Competition, the bureau worked closely with the states in merger and non-merger investigations. I intend to have the Commission continue that close working relationship between the states and the Commission's enforcement and policy bureaus.

Question 2. In the Dodd-Frank Act of 2010, Congress gave the FTC extensive authority over the sale, servicing, and leasing of automobiles—charging it to protect consumers from abusive auto lending practices and granting it exclusive authority to draft rules governing unfair or deceptive acts or practices by automobile dealers.

Would you support the FTC using its rulemaking authority to rein in unfair or deceptive acts or practices by automobile dealers?

Answer. My general preference is to emphasize law enforcement actions against unfair or deceptive acts or practices, rather than enact rules that may be difficult and time-consuming to adopt, and which may at times inadvertently chill procompetitive or efficient conduct. However, I can commit to discussing with my fellow commissioners and FTC staff whether, in light of the FTC's experience and knowledge, the Commission should exercise its rulemaking authority or whether an increase in the Commission's law enforcement efforts are necessary and advisable.

Question 3. More than 17 million Americans are the victims of identity theft every year. This problem seems to increase year over year as identity theft scams seem to get more sophisticated. Three years ago, the FTC established IdentityTheft.gov. This site is supposed to be a one-stop shop for victims of identity theft where they can easily freeze credit across the big three credit reporting agencies, and recover their stolen identities.

This website's functionality is limited, however, because of what appears to be a lack of engagement by the credit bureaus to make the site what it should be.

How would you engage with credit bureaus to ensure IdentityTheft.gov has a comprehensive suite of easy to use tools allowing victims of identity theft to recover as quickly as possible, with as little stress as possible? What are your expectations with respect to the role the credit reporting agencies should play in making IdentityTheft.gov an effective one-stop shop for identity theft victims?

Answer. Protecting consumers from identity theft is crucial. I am not yet fully briefed on the limitations you note, but I will consult with the FTC's enforcement and technology staff to determine what improvements to IdentityTheft.gov are necessary. I expect that the active participation of all stakeholders—including reporting agencies—will be important, and thus I will confer with staff and my fellow commissioners about how we can continue with a collaborative approach to preventing and remedying identity theft into the future.

Question 4. Would you support FTC's jurisdiction be expanded to include non-profits and charities so that it can act more swiftly to prevent and stop illegal conduct in the nonprofit sector?

Answer. Yes.

Question 5. Other Federal agencies charged with consumer protection make an array of data available on consumer complaints received. The FTC releases relatively very little data on companies receiving significant levels of complaints. Do you think the FTC should be more transparent about the complaints it receives?

Answer. I think it is important that the Commission be as transparent as possible about its operations. However, publicly identifying companies who are the subject of unsolicited complaints to the FTC, in particular, raises issues of due process and

fairness. I would like to better understand whether the Commission can balance the need for transparency with its law enforcement efforts aimed at illegal conduct.

Question 6. The Consumer Financial Protection Bureau was created in response to the 2008 financial crisis and Great Recession after it became clear that our financial sector needed far more oversight to prevent a disaster of that magnitude from happening ever again. The current Administration seems intent on gutting this agency that serves a critical role in protecting Americans from irresponsible financial institutions. Of course, the CFPB and the FTC complement each other in their protection of consumers. How do you envision the FTC's role in holding financial institutions accountable?

Answer. I expect the FTC to play a strong, aggressive role in holding financial institutions accountable for engaging in unfair or deceptive acts or practices. As you note, other agencies have complementary and sometimes primary jurisdiction over financial institutions, and I expect in those situations we will work aggressively with our sister agencies to prevent financial institutions from engaging in prohibited conduct. I also believe the Commission can and should engage in advocacy and public education to prevent financial institutions from adopting unsafe or unsound practices, in those areas in which we have experience and knowledge.

Question 7. Other consumer protection agencies appear to be reducing the vigor of their enforcement work. In what way should this impact the priorities of the FTC?

Answer. I intend to have the Commission enforce its laws vigorously and aggressively; if confirmed, this will be my third significant job at the Commission, and I would not return to the Commission if I did not believe strongly and wholeheartedly in its mission. If other agencies are reducing the vigor of their law enforcement work in areas where we share jurisdiction, it may be appropriate for us to step up our efforts.

Question 8. In the past, the FTC has cracked down on for-profit colleges and vocational programs with strong enforcement actions. However, we're seeing these institutions continue to defraud Americans. A study conducted by The Century Foundation found that 98 percent of complaints asking for student loan forgiveness alleging fraud by colleges were from students attending for-profit institutions. If confirmed, how will you protect Americans from being scammed by such institutions?

Answer. I intend to have the Commission enforce its laws and regulations in this area aggressively, because as you mentioned, this is very important work. Student loan debt is a significant burden, and in return for taking on that debt, students should receive education or training that is useful in obtaining future employment. I will consult with the FTC staff, and relevant leadership at the Department of Education, as well as state enforcers and regulators, to identify additional ways the FTC can prevent students from falling victim to educational scams and better obtain remedies when it happens.

Question 9. More than two of every three American households own a pet. The FTC has estimated they will spend \$10.2 billion on medications this year, of which more than \$5 billion require a prescription. It has been estimated that pet owners who can get a copy of their pet's prescription and shop around, could save 20 to 30 percent on branded medications and 50 percent when they purchase generics. This suggests that prescription portability can save pet owners billions of dollars every year—in addition to the savings in time and transportation if they can get those prescriptions filled while they are at the grocery store or pharmacy or delivered from an online pharmacy. Unlike with human medications, with our pets, the prescriber also dispenses the medication prescribed—setting up a conflict of interest whereby the prescriber is both a health care provider and a retailer.

In testimony in 2016, the FTC stated that “we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.” Do you agree with this conclusion?

Answer. Yes, as in many other areas, portability is likely to enhance competition. This strikes me as simple economics—it increases the potential suppliers of pet medication a pet owner can easily purchase from, and such competition will likely lead to lower pricing.

Question 10. The prescribing and dispensing of human medications has long been separated. With eyeglasses and contact lenses, where prescribers also sell the products they prescribe, Federal law grants consumers the right to their prescriptions. Why should it be any different for pet owners with regards to medications for their pets?

Answer. I am not aware of any reason, grounded in antitrust law or consumer protection law, for different treatment.

Question 11. Manufacturers of pet medications can, and do offer inducements to veterinary clinics to prescribe and sell their medications.

Do you think the public, and pet owners who spend billions of dollars annually on prescription pet medications have a right to know whether their vet clinic is receiving payments from the manufacturers of drugs that clinic prescribes?

Answer. I think this is an area where the Commission can work with the relevant ethical and certifying boards to impress upon veterinarians and clinics the importance of disclosure. However, the receipt of payments is not, in and of itself, illegal, and may be offered in support of educational and marketing efforts, among other things. When that is the case, such payments may increase competition in the markets for prescription pet medications—for example, such payments can help encourage the introduction of a new supplier to compete with an incumbent provider, thus adding, not lessening, competition. But I will consult with staff about the ways to keep this market transparent and competitive, to the benefit of consumers.

Question 12. In 2003, Congress passed the Fairness to Contact Lens Consumers Act (“FCLCA”) to grant the 40 million Americans who wear contact lens wearers the right to copies of their prescriptions. The law also established a process for consumers to have their prescriptions verified when they purchase their lenses from a retailer other than the prescriber.

On September 3, 2015, the FTC launched its ten-year review of the Contact Lens Rule. The comment period closed on October 26, 2015, after the Commission received over 660 comments from a wide variety of stakeholders including optometrists, ophthalmologists, consumers, contact lens manufacturers and third-party contact lens sellers such as big box stores and online retailers.

On December 7, 2016, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) concluding that “compliance with the automatic prescription release provision could be substantially improved.” This is consistent with the comments of 20 State Attorneys General who reported to the Commission that: “[t]he States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a matter of course.” The NPRM also proposed the common sense solutions of having consumers sign an acknowledgement that they have received their prescriptions and clarifying the right of consumers and their chosen retailers to receive additional copies of those prescriptions.

If confirmed, will you prioritize finalizing this proposed rule, to help ensure all consumers will receive copies of their prescriptions, as Congress intended? Considering FTC’s limited resources, and the significant resources that would be required to take action against individual prescribers who are not in compliance with this requirement under the current rule, do you agree that the FTC’s proposed rule is an efficient means of promoting compliance?

Answer. I strongly support the Commission’s rules requiring consumers to receive copies of their prescriptions. The Commission is continuing to accept and review comments in the rulemaking you reference, and will soon hold a public conference on the proposed rule, where interested parties will debate the merits of, and possible alternatives to, the rule. Therefore, I would like to defer taking a position on the merits of the rule as currently formulated, and the Commission’s ability to enforce the existing rule, until the record in this matter is complete.

Question 13. The FTC has not pursued any enforcement activity under the Military Lending Act, despite having the authority to enforce this important protection. If confirmed, would you support vigorous enforcement of the MLA?

Answer. Deceptive practices aimed at our military members and spouses are abhorrent. I support enforcement of the MLA. I will discuss with staff, and determine whether there is some deficiency in the Act that has prevented the Commission from pursuing cases, or whether the Commission has not yet devoted sufficient resources to this area.

Question 14. There are numerous examples of the FTC exercising complementary jurisdiction with a specialized agency. How would you envision FTC’s cooperation with other agencies under your leadership?

Answer. It is important that the agency work cooperatively and comprehensively with its sister agencies, and it is important to effective law enforcement that agencies with dual or complementary jurisdiction welcome the efforts of one another. I expect the Commission to work cooperatively with other agencies, and to leverage its resources to make such cooperation worthwhile to other agencies, and to consumers. I will instruct the law enforcement teams in the Bureaus of Competition and Consumer Protection to alert me quickly if they believe there are impediments to such cooperation so I, or the Commission, can take the steps necessary to address them.

Question 15. Under your leadership, will the FTC continue to thoroughly pursue cases that hold individuals and companies that have aided and abetted scams accountable—no matter how big or insulated they may be?

Answer. It is important that the FTC hold accountable firms that aid and abet other firms in their deceptive and fraudulent scams. We will enforce the law without regard to how big, powerful or important a company is. Whether the law on aiding and abetting will allow us to reach all companies that participate in a scheme, or that control a company that participates in a scheme, is something I will ask the General Counsel's office to consider carefully. It is important to pursue all avenues to choke off the ability of companies to pursue fraudulent and deceptive conduct; aiding and abetting charges are an important tool in doing so.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
JOSEPH SIMONS

Question 1. The February 2013, the Federal Trade Commission published a report that found that five percent of consumers had errors on their credit reports that could result in less favorable terms for loans.

a. Based on that study, do you think the consumer reporting agencies (CRAs) comply with the Fair Credit Reporting Act (FCRA)'s requirement to "follow reasonable procedures to assure maximum possible accuracy" of credit reports? (15 USC 1681e(b))

b. Do you think the FTC should conduct a follow up study to see if error rates have improved?

c. If error rates continue to impact millions of Americans, what actions should the FTC take to enforce compliance with the FCRA?

Answer. *Answer to (a), (b), and (c):* The presence of errors on a consumer's credit report can have significant financial and non-financial impacts on that consumer. Whether the prevalence of errors mentioned is evidence of a failure of the consumer reporting agencies to comply with the Fair Credit Reporting Act is something that, if confirmed, I will discuss with the Commission staff and, if appropriate, the leadership of the CFPB. Similarly, whether a follow-up study is necessary to determine whether error rates are improving is an issue I will need to discuss with the Commission staff and fellow commissioners; without the context that information may provide, the appropriate next steps, if any, are not clear to me. However, this is an area where we should all expect improvement over time because of the importance of this issue to consumers.

Question 2. Do you think the policies and practices of CRAs to handle consumer disputes are in compliance with the FCRA?

Answer. Compliance with the FCRA is critical. However, I simply do not have sufficient information to provide a response to your question, nor do I want to prejudge a matter that may come before me at the Commission. However, this is an important question and, if confirmed, I will consult with Commission staff to determine if additional efforts with respect to compliance by the consumer reporting agencies are required.

Question 3. In 2015, the New York Attorney General reached a groundbreaking settlement with the three national consumer reporting agencies—Experian, Equifax, and TransUnion. The terms of the settlement require the CRAs to do more to ensure maximum possible accuracy of credit reports and to improve the dispute resolution process for consumers.

Do you think the terms of the settlement regarding dispute resolution represent best practices for CRAs' compliance with the FCRA's requirement that CRAs conduct a "reasonable reinvestigation" if the consumer disputes the accuracy of the information in his or her credit report? (15 USC 1681i)

Answer. I do not have sufficient information to give you a legal conclusion with respect to the CRA's compliance with their responsibility under the FCRA, nor would I want to prejudge a matter that may come before me if I am confirmed. If confirmed, I will consult with the FTC's career staff to determine whether additional action is warranted with respect to the sufficiency of relief obtained by the New York Attorney General.

Question 4. Can the FTC use its current authorities to hold CRAs to higher standards when it comes to handling consumer disputes?

Answer. Publicly available information suggests that CRA's handling of consumer disputes can be improved, but I do not wish to prejudge whether the CRA's need to be held to higher standards. I would like to confer with the FTC's career staff and fellow commissioners, and, if appropriate, the leadership and staff of the CFPB,

and determine whether any further FTC action is necessary. I believe that if there is a need to hold CRA's to higher standards with respect to billing disputes, the FTC or other agencies have the authority to do so. Section 5's prohibition on unfair or deceptive acts or practices is very broad and, upon a suitable record, the Commission has authority under the FTC Act, along with the Fair Credit Reporting Act prohibitions, to define what practices are unfair or deceptive.

Question 5. What are your views on the adequacy of the Fair Credit Reporting Act enforcement regime?

Answer. I do not yet have sufficient information to provide an adequate answer. If confirmed, I will consult with the career staff of the FTC and determine whether the enforcement regime is adequate. In general, I think we can make improvements in our enforcement efforts by a better use of our resources and more focused application of our authority.

Question 6. What are your views on the inclusion of medical debt in credit reports?

Answer. I believe it is appropriate to consult with the career FTC staff on this question—it is not an issue I have considered in any detail during my career, and I would like to have the benefit of the staff's experience and expertise before formulating a definitive position.

Question 7. Consumers have the right to inspect their credit reports every year. Do you think they should also have the right to inspect their credit score?

Answer. As above, this is not an issue I have considered in any detail during my career. As such, I would need to consult with the career FTC staff and come to a conclusion with the staff's experience and expertise on the matter.

Question 8. Do you think the credit reporting market is functioning well? In your view, what areas could be improved?

Answer. I believe it is likely that improvements are possible, but I would need to consult with the career FTC staff on this question. As it is not an issue I have considered in any detail during my career, I would like to have the benefit of the staff's experience and guidance on this issue before reaching a conclusion.

Question 9. Do you think it is sound public policy for consumers to have to pay to freeze their credit report?

Answer. While such a policy likely does not create the right incentives for consumers to take steps that may protect them from some of the costs associated with identity theft, and such costs may create a barrier to certain consumers' ability to protect themselves, free credit freezes may not be appropriate in circumstances not associated with identify theft or data breaches. I would like to confer with the FTC staff to have the benefit of their experience and thinking on this issue.

Question 10. Do you think it is confusing for consumers to understand the difference between freezes, which are defined by and regulated under state law, and the CRAs' various "lock" products, which fall outside of the protection of state law?

Answer. I can see the potential for confusion, but this is a question that can be tested empirically and may already be the subject of such testing. If confirmed, I will ask the career staff to determine whether there is good quality empirical work on this question and what that work concludes, and whether any additional work would be useful to undertake.

Question 11. Should the FTC have the authority to ensure compliance with the Safeguards Rule?

Answer. The FTC has previously brought enforcement actions against firms for a failure to comply with the Safeguards Rule; I do not understand those actions, nor the FTC's authority in this area, to be particularly controversial.

Question 12. Do you think the FTC has the right expertise and capacity to investigate and evaluate algorithms for unfair, deceptive, fraudulent consumer practices in the marketplace?

Answer. The career staff at the FTC is very capable. I expect that the FTC does have the expertise necessary to investigate and evaluate algorithms for unfair, deceptive, and fraudulent consumer practices. If the Commission does not have this expertise, I will confer with fellow commissioners about acquiring it.

Question 13. Will you prioritize bringing in additional technical talent to strengthen FTC's mission in the digital domain?

Answer. If confirmed, I intend to make sure the FTC has the resources it needs to perform its mission, and if that involves more talent for the digital domain, then yes.

Question 14. What are your views of the FTC's ability to ensure adequate oversight of online privacy? Please include your perspective on the FTC's expertise and

the adequacy of the regulatory tools available to it. What specific actions would you propose the FTC undertake to improve online privacy?

Answer. Properly defining consumers' privacy expectations and measuring harm associated with the violation of such expectations are important, and, along with advancement in the Commission's articulation of its data security expectations, will be a significant focus of the Commission's enforcement and policy agenda, if my nomination is confirmed. The broad reach of the Commission's authority and the talent of the staff, places the Commission in a good position to fulfill its mission in this area. In terms of specific actions, I would like to confer with fellow commissioners about bolstering the agency's expertise in the digital markets, as well as providing additional guidance to firms and businesses seeking clarity. My intention is to focus on significant matters that can make the biggest impact in this area.

Question 15. The FCC's Net Neutrality order is premised upon ISPs disclosing voluntary policies and the FTC enforcing compliance with those policies.

Do you agree that the FTC's authority only extends to enforcing a company's compliance with whatever policy the company issues? If not, please explain.

Answer. The FTC has full authority under Section 5 to challenge both competition and consumer protection violations, of which enforcing compliance with disclosed policies is only one part.

Question 16. If the Ninth Circuit's decision in *FTC v. AT&T Mobility* is allowed to stand, what authority, if any, will the FTC retain to enforce these company policies?

Answer. Such a decision would only be binding in the 9th Circuit, and it could still be overturned by appeal to the Supreme Court. Subject to a review of an unfavorable opinion and consultation with the Commission, the staff and the General Counsel, if the Commission is unsuccessful in the 9th Circuit, I believe it would be appropriate to appeal a loss to the Supreme Court.

Question 17. What is your view of the propriety of the FTC imposing conditions on proposed mergers as compared with suing to block a deal? How would you evaluate when to use one or the other?

Answer. Imposing conditions on a merger is appropriate when the merger would otherwise violate the antitrust laws, and the conditions imposed are very likely to remedy the underlying competitive concerns so that consumer welfare will not be harmed. When a merger would violate the antitrust laws and a good remedy short of blocking the transaction is not available, then the transaction should be blocked outright.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
JOSEPH SIMONS

Question 1. What are your ideas how to promote consumer protection in an increasingly online—and connected—world?

Answer. Markets today are evolving quickly, and it is incumbent upon the FTC to keep up. If confirmed, I will assure that agency staff and resources are committed to keeping our enforcement and consumer education agenda current and responsive to new products and markets. We will closely study emerging challenges, and vigorously enforce our consumer protection laws, as more and more of life and commerce moves online.

Question 2. Do you believe that the current FTC enforcement principles are sufficient to protect consumers? And do you believe the FTC has the resources necessary to protect consumers given the significant amount of work on the docket for the agency?

Answer. The FTC holds broad authority to stamp out unfair or deceptive acts or practices, and has a long, bipartisan tradition of using that authority to protect consumers. If confirmed, I plan to vigorously enforce those laws. Along with fellow commissioners, I plan to take stock of what else the FTC may need, and I would be happy to work with you and this Committee to fill any gaps we may find.

Question 3. In December, I wrote to the FTC, along with Senators Schumer and Blumenthal, asking for a workshop to discuss the increased use of "bots" to purchase large quantities of in-demand toys and items, particularly at Christmas. The FTC has confirmed that it will engage with key stakeholders to determine if a workshop is necessary. Will you commit to reviewing the record on this issue and to working with my office to determine next steps, including the possibility of legislation?

Answer. Yes.

Question 4. Last week, an article in *TechCrunch* showed how Facebook uses data from Onavo Protect, a subsidiary app, to gather data on its competitors; how Google uses its search rankings to demote alternate competitive sites; and Amazon's aggressive low pricing undercuts book publishers. Under your respective leadership, how will the FTC enforce the principles of unfair methods of competition against tech giants like Facebook, Google and Amazon to promote consumer welfare?

Answer. Consistent with my previous tenure at the FTC, I plan to forcefully enforce our antitrust laws, so as to assure the economy continues to produce benefits for consumers. The Commission will need to study emerging trends closely and assure that our agenda reflects the most current pressing challenges. Where warranted, I plan to work with fellow commissioners to aggressively pursue law enforcement actions needed to keep markets competitive.

Question 5. Following the FTC's approval of the Google/DoubleClick acquisition in 2007, then Commissioner Pamela Jones Harbor released a dissent detailing the need for the commission to "evaluate the implication of this kind of data merger from a competition as well as a consumer protection perspective." As commissioner, how would you use this framing of data mergers in evaluating mergers and acquisitions in the technology industry?

Answer. If confirmed, I intend to take a close look at the evolving technology space, and will assure that the FTC brings its expertise to bear in studying emerging trends. Our consumer protection and competition efforts must remain current with evolving markets, and the collection of data is an important part of that.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO
JOSEPH SIMONS

Question 1. When Congress passed the Fairness to Contact Lens Consumers Act in 2004 it helped reduce barriers to retail competition in the contact lens market and led to lower prices for consumers. However, contact retailers sometimes sell patients contact lenses after the prescription has expired or fail to adequately verify the prescription in accordance to FCLCA. In some cases, this has led to dangerous eye and health conditions for the patient. How can the FTC work in coordination with the FDA, CDC and other Federal agencies to make sure contact lens patients are receiving high quality care and safe contact lenses?

Answer. It is critical that the FTC work closely with other agencies where jurisdiction overlaps and goals can be pursued jointly. If confirmed, I plan to assure that the FTC brings both its expertise and authority to bear on the Contact Lens Rule, and to work closely with other agencies like the FDA and CDC.

Question 2. In December 2016, the FTC issued a proposed change to the current Contact Lens Rule that mandated that all eye doctors obtain a signed acknowledgement form from each of their contact lens patients when they receive a copy of their prescription. Do you know of any other ways for patients to understand their right to their contact lens prescription that would be just as, if not, more effective than a written acknowledgement?

Answer. If confirmed, I plan to confer closely with staff at the Commission to explore alternative approaches in addressing the needs of both a competitive contact lens market and patient safety. As a part of ongoing efforts in this area, there is a public workshop scheduled in March that will provide the Commission with information to move forward.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
TO JOSEPH SIMONS

Question 1. Restoring Internet Freedom FCC-FTC MOU

Within the net neutrality MOU, signed between the FCC and FTC, regarding the FTC's authority it states: "*Congress has directed the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.*"

Therefore, can you say without reservation that you'll have what you will need, upon being confirmed at the FTC, to actually catch improper actions taken by Internet service providers toward consumers?

Answer. The rule was only very recently issued, and thus I would like a chance to confer with staff about it. But I can say that, if confirmed, I will vigorously enforce our laws and use every tool we have to assure the fairness and competitiveness of our markets, upstream and downstream. In the event that our authority

does not prove enough to get that job done, I will come back to you and this committee to talk about a solution.

Question 2. Court Case on FTC Authority over “Common Carriers”

Unfortunately we still don’t know the full FTC authority over common carriers, like in the case pending on AT&T, so I would like to hear what you anticipate will be FTC’s authority going forward.

Answer. There are certainly open questions about the FTC’s authority resulting from the pending case. I will be following it closely, and should the result leave the FTC with less authority than is necessary to accomplish both our consumer protection and competition missions, I will come back to this committee and work towards a solution.

Question 3. Court Case on FTC Authority over “Common Carriers”

How you can ensure the FTC will even have the authority to enforce the limited principles covered in Chairman Pai’s weak form of net neutrality?

Answer. I am committed to vigorously enforcing the broad mandate of the FTC to stamp out unfair or deceptive acts or practices, and keep our markets competitive for consumers. Should that not prove enough, I will be eager to work with you and the committee in finding a solution.

Question 4. Court Case on FTC Authority over “Common Carriers”

And I would ask if you can provide me a true commitment to act on behalf of consumers who are impacted by less than fair practices by some in the telecommunications industry.

Answer. Absolutely.

Question 5. Broad Positions on FTC’s Place on Net Neutrality

Can you please define for me what the lead telecommunications policy expert Federal agency is, in your opinion?

Answer. The FCC has enormous subject matter expertise in telecommunications. The FTC also has an outstanding staff of attorneys and economists who are capable of providing invaluable insight into the industry and how to keep it competitive, and free from deceptive or unfair acts or practices.

Question 6. Broad Positions on FTC’s Place on Net Neutrality

Have you specifically recently read the MOU on net neutrality between the FCC and FTC, and do you support it in its entirety?

Answer. I have read the memo of understanding, and will support it as long as it stays in effect.

Question 7. Broad Positions on FTC’s Place on Net Neutrality

What is your understanding of the capacity of the staff currently at the FTC, and do you think you can effectively execute this agreement enough to garner true public trust in ensuring a truly free and open internet?

Answer. The FTC has an outstanding staff that does exceptional work in supporting enforcement actions aimed at keeping markets free, fair, and competitive. Of course, it is also incumbent upon the FTC to stay current as innovation leads to rapid market evolution, and to that end, if confirmed, I will confer with staff about bringing in all necessary subject matter experts.

Question 8. Consumer Education

The net neutrality MOU between the FCC–FTC includes the reference to “*Collaboration on consumer and industry outreach and education efforts, as appropriate.*” As well as: “*The Agencies may coordinate and cooperate to develop guidance to assist consumers’ understanding of Internet service provider practices.*” It strikes me in many cases it will be difficult to respond to many potential violations to an Internet provider’s stated policy, so we need to make sure you’re working on behalf of the consumer to act as a form of deterrent.

So will you be prioritizing consumer education on how to document and submit complaints to the FTC for review?

Answer. Yes, it will play an important role in our enforcement efforts.

Question 9. Supposed Transparency and ISP’s Public Policies

The net neutrality MOU between the FCC–FTC states: *Consistent with its jurisdiction, the FTC will investigate and take enforcement action as appropriate against Internet service providers for unfair, deceptive, or otherwise unlawful acts or practices, including but not limited to, actions pertaining to the accuracy of the disclosures such providers make pursuant to the Internet Freedom Order’s requirements, as well as their marketing, advertising, and promotional activities.*

Do you have a sense that you can ask ISPs to amend their supposed transparent blocking and throttling language or commitments?

Answer. Nothing stops the FTC from asking an ISP to clarify its language, nor from suggesting ways in which firms can amend their marketing materials to avoid being deceptive or unfair.

Question 10. In other words, is it your opinion that your authority at the FTC includes determining whether the ISPs are being transparent or in other cases, just presenting a very broad policy that leaves gaps in a consumer's understanding of their providers protections or limitations to control the flow of information to them?

Answer. The authority of the FTC to police unfair or deceptive acts or practices is quite broad. To the extent an ISP issues a policy that leaves gaps and is deceptive or unfair, the Commission has the authority to proceed against such an ISP and should do so.

Question 11. Broadband Internet Speed Honesty

I am aware that various state Attorneys General are concerned that a telecomm industry petition to the FCC on cost transparency, related to the advertisement of Internet speeds, quote "represents nothing more than the industry's effort to shield itself from state law enforcement."

Given the FTC's mission regarding deceptive practices, can you speak to your perspective on whether this is fair consumer protection issue to be concerned about at FTC, given the prices and promises ISPs make to generate more business?

Answer. I am unclear on how the petition you describe may possibly shield firms from state law enforcement, and I can consult agency staff on the matter, if confirmed. But I will commit to you that I intend to work closely with our state counterparts to prevent, remedy, and punish firms from making material promises to consumers that they ignore or fail to keep.

Question 12. Protection of Minorities, Children, and other specific Groups

Considering the fact that in 2011, FTC estimated 11 percent of American adults were fraud victims, and 13.4 percent of Hispanics were victims, almost 50 percent higher than the rate for non-Hispanic whites.¹

Current acting FTC Chair Ohlhausen has detailed a specific effort to assist those where English is their second language through things like her Every Community Initiative.

Can you commit to continue efforts like to this to ensure we keep our focus of consumer protection on all of our populations?

Answer. Yes.

Question 13. FTC Investigation on GPS tracking of Vehicles

Last year it was revealed that the Federal Trade Commission is investigating GPS tracking technologies used in the subprime auto loan industry, but my understanding is that no findings or rulings have been released. Going back as far 2014, the New York Times had highlighted this as a concern. In their piece, they highlighted a troubling story of a mother in Las Vegas, Mary Bolender, who needed to get her child with a 103.5-degree fever to the ER, but her 2005 Chrysler van wouldn't start. As the piece says—"The cause was not a mechanical problem—it was her lender."

Now I have a number of concerns with their as a business practice, but can I get a commitment from you to continue to look into this issue and publically provide information on your findings and enforcement determinations in a timely manner?

Answer. It is important that I not prejudice the outcome of what you have described. But, generally speaking, yes, I will continue to look into this issue and consult with the FTC staff on the status and substance of any ongoing or related investigation. Any public discussion of the FTC's investigation and enforcement decisions can only be made in consultation with my fellow commissioners and must take account of how any publicity may affect existing or future investigations or enforcement actions.

Question 14. Franchise Business Oversight

The FTC has jurisdiction over franchise businesses. In my state, I have heard complaints from Subway franchisees that the Franchise Disclosure Document is written in favor of the franchisor in a way that can undermine their ability to succeed. Nevada's neighboring state of California has passed a bill protecting franchisees. How can the FTC expand protections for franchisees so they can financially succeed?

Answer. The franchisor-franchisee relationship is governed by various laws and regulations, including, in some instances, state law and regulation, and the effect of those various laws and regulations may, in some instances, be to favor one party

¹ https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf

to the franchise contract. I am not aware of the complaints you have identified, but I can commit to discussing with the staff of the FTC whether they have heard similar complaints from these and other franchisees, and whether such concerns can be and are appropriate to be addressed by the FTC.

Question 15. Mortgage Closing Fraud

Thieves have been targeting mortgage closings, where they break into a realtor or title company's e-mail accounts. Then, they tell the homebuyer to wire money they have saved and borrowed to a bank account owned by the thieves. How do you think the FTC can work with the Consumer Financial Protection Bureau to prevent these types of scams?

Answer. Fraudulent conduct, especially frauds that create significant financial harm, should be attacked vigorously. I intend for the FTC to continue working closely with the CFPB to combat financial fraud. I am not yet privy to the extent of the FTC–CFPB relationship and cooperation, nor internal procedures that allocate resources to such matters. I plan, if confirmed, to discuss this with FTC staff and my fellow commissioners, as well as CFPB staff and senior leadership, in order to determine how best to work together to limit such scams and fraudulent behavior. Finally, where such conduct is better prosecuted as criminal conduct, I will continue the FTC's practice of working with U.S. Attorneys in addressing the issue.

Question 16. Reverse Mortgages

Reverse mortgages are products sold to seniors to help them “age-in-place” and use their home equity as a means by which to responsibly pay their bills. Reverse mortgages can be sensible products, but sometimes have been falsely advertised to seniors. The FTC and the Consumer Financial Protection Bureau conducted a “sweep” of reverse mortgage advertisements, and a review of consumer complaints, and found that three reverse mortgage companies engaged in deceptive advertising which misled consumers.

Given the overlapping jurisdictions between the Consumer Financial Protection Bureau and the FTC, can you discuss how you envision the two entities work together to combat financial fraud, specifically scams impacting seniors?

Answer. I intend for the FTC to continue working closely with the CFPB to combat financial fraud, including but not limited to scams impacting senior citizens. I think it is important that each agency bring to such matters those rules, regulations, enforcement tools, and penalty provisions that maximize our ability to stop such conduct and protect consumers from becoming victims of it. Again, I am not yet privy to the extent of the FTC–CFPB relationship and cooperation, nor internal procedures that allocate resources to such matters, but I plan to discuss this with the FTC staff and my fellow commissioners, as well as CFPB staff and senior leadership.

Question 17. Debt Collection

Debt collectors generate more complaints to the FTC than any other industry. And in recent years, the CFPB has noted that debt collection remains the top complaint received by the Bureau from older Americans. Specifically, the Consumer Bureau identified several issues related to debt collection and seniors, including hounding calls, harassment and threats of impermissible Social Security garnishment.

How do you think the FTC could work with the CFPB to bring more rules-of-the-road to this part of the financial services marketplace to protect consumers—particularly seniors—from fraudulent practices?

Answer. This is a very important issue—our most vulnerable are often targets of fraud and deceptive conduct by unscrupulous actors. With respect to how the FTC can better work with the CFPB in this area, I intend to consult with the staff of the FTC and the CFPB, as well as my commissioner colleagues and the senior staff of the CFPB, to confirm we are making maximum use of our resources and authority. Some of this conduct is, and should be prosecuted criminally, and I will continue the FTC's practice of working with U.S. Attorneys to attack the most egregious and harmful deceptive and fraudulent conduct where criminal penalties can apply.

Question 18. Merger Review Commitment

With increased multi-industry players growing in prominence by acquiring more businesses outside their core business model, can you commit to reviewing the horizontal merger guidelines, which have not directly addressed vertical mergers since 1984?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
CHRISTINE S. WILSON

Question 1. Many online companies are engaging in targeted advertising. Using consumer data, companies can target what they deem to be the most relevant ads to consumers. Should there be more transparency into how the algorithms behind targeted advertising work so that consumers can see how they are being targeted for certain messages?

Answer. I have had an opportunity to review publicly available materials regarding the FTC's recent research in this area. If confirmed, I would speak with FTC staff regarding any additional non-public work that the agency has already undertaken in this space, and any conclusions that have been drawn from that work. In conjunction with my colleagues on the Commission, I would carefully evaluate the issues presented by this type of algorithm that fall within the jurisdiction and authority of the FTC and how best to address them.

Question 2. Would third party audits of algorithms be a reasonable way to ensure the algorithms are doing what companies claim and not harming competition or consumer choice? Is this something the FTC might consider looking into?

Answer. I have had an opportunity to review publicly available materials regarding the FTC's recent research in this area. If confirmed, I would speak with FTC staff regarding any additional non-public work that the agency has already undertaken in this space, and any conclusions that have been drawn from that work. In conjunction with my colleagues on the Commission, I would carefully evaluate the issues presented by this type of algorithm that fall within the jurisdiction and authority of the FTC and how best to address them.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
CHRISTINE S. WILSON

Question 1. As a former Attorney General of Alaska, I always appreciated coordination with Federal agencies where appropriate, and the opportunity to communicate solutions that made the most sense for Alaskans. Given the importance of state attorneys general to the FTC's antitrust enforcement, please describe your views on the working relationship between the FTC and state attorneys general.

Answer. In my experience, the FTC and the state AGs have had a close and constructive working relationship. If confirmed, I would encourage FTC staff and my fellow Commissioners to continue this tradition.

Question 2. As you know, the state I represent is unique which means its problems are unique and require unconventional solutions. In a highly rural state like Alaska, many communities are not connected by roads, challenging weather conditions prohibit timely delivery of mail and other essential services, and quality connectivity is considered a luxury. One of your objectives at the Commission is consumer protection and education. How will you ensure that rural constituents like mine have the tools they need to make informed decisions and in cases of abuse that require follow up, for example data breaches or identity theft, the information necessary to mitigate risks and resolve the issue?

Answer. It is important that the FTC's good work on consumer protection and consumer education be made available to all citizens, including your constituents and those who are similarly situated in rural communities across America. The FTC has sought in various ways to ensure that its education initiatives and information regarding its enforcement actions reach their intended audiences. For example, during my tenure as Chairman Muris' Chief of Staff, the FTC rolled out many Spanish-language consumer education materials. In addition, many FTC orders require the respondent in an enforcement proceeding to distribute to customers, board members, and other stakeholders materials pertaining to the alleged law violations. If confirmed, I look forward to working with the FTC staff (including in the FTC regional offices) and my colleagues on the Commission to ensure that ever-increasing numbers of consumers—including those in rural communities—are able to obtain needed information.

Question 3. In your prepared statement, you discuss anticompetitive consolidation, which immediately called to mind the enormous market capitalization of tech companies. Recent calculations value the four largest tech companies' capitalization at \$2.8 trillion, which is a staggering 24 percent of the S&P 500 Top 50, close to the value of every stock traded on the Nasdaq in 2001, and to give a different perspective, approximately the same amount as France's current GDP. Press reports have also noted allegations of increased anti-competitive behavior by some of these companies. Is there a point at which these companies are simply too big from an anti-trust standpoint?

Answer. The size of a company may or may not indicate the existence of market power, and it is market power, not size per se, that lies at the heart of antitrust analysis. Companies that grow by providing innovative products and services at attractive prices (*i.e.*, through superior skill, foresight, and industry, in the words of a seminal antitrust case) create benefits for consumers.

In these instances, the FTC most effectively promotes consumer welfare by refraining from intervening. But companies that grow or maintain their preeminence by engaging in what may be anticompetitive or exclusionary conduct can and should be closely scrutinized by the FTC.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEAN HELLER TO
CHRISTINE S. WILSON

Question. When Congress passed the Fairness to Contact Lens Consumers Act in 2003, it was a pro-consumer measure that ensured consumers automatically receive a copy of his or her prescription after an eye exam—without having to ask for it, pay an additional fee, or sign a waiver. Do you agree that consumers should receive copies of their prescriptions as Congress intended so that they can use the prescription to purchase their contact lenses from a source of their choosing?

Answer. Yes.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JIM INHOFE TO
CHRISTINE S. WILSON

Question. The Federal Trade Commission can be an advocate for competition and an unfettered free market—both here in the United States and abroad. You have a background dealing with antitrust enforcement and consumer protection regulations internationally. How can the Federal Trade Commission continue to lead on antitrust enforcement and consumer protection issues such as fraud prevention on the international stage? What more can the Federal Trade Commission do to ensure that due process is respected and U.S. consumers and companies are treated fairly by other jurisdictions.

Answer. The FTC has long provided an important perspective on the sound enforcement of competition and consumer protection issues in the international arena. The FTC makes its views known through its participation in multilateral organizations like the OECD and the International Competition Network, through formal bilateral relationships between the U.S. and other jurisdictions, through informal consultations, and through technical assistance programs. Given the proliferation of competition and consumer protection regimes abroad, and the emergence of decisions by foreign authorities potentially motivated either by a desire to protect national champions or by other industrial engineering considerations, these efforts are more important than ever. As your question notes, I have worked extensively on international competition/consumer protection law and policy issues, and if confirmed, I would hope to contribute significantly to the efforts of the FTC to promote due process and sound enforcement abroad. Moreover, given the importance of international cooperation when addressing fraud, if confirmed, and in conjunction with my colleagues, I would support continued robust global cooperation to combat fraud and to identify ever better ways to identify and halt this pernicious conduct.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
CHRISTINE S. WILSON

Question 1. The FTC is a relatively small agency that has to effectively use its resources to cover a very broad jurisdiction. In this regard, as a matter of discretion, it may be wise for the FTC to pursue enforcement cases involving practices that result in substantial harm. However, substantial harm is not a legal requirement under section five of the FTC Act—cases involving deception do not require harm at all, and cases involving unfairness can involve harm that is prospective and/or non-financial. Consequently, it is very important that commissioners do not stringently require types of harm as a legal test for agency enforcement actions. This principle is particularly important because Lab MD is challenging the FTC's legal authority to bring enforcement actions for data breaches based on the lack of requisite harm. As a commissioner, will you pledge to not require substantial harm or financial harm as legal tests for FTC enforcement actions?

Answer. If confirmed, I will enforce the terms of the FTC Act, together with corresponding guidelines and relevant judicial precedent. Section 5(n) provides that an

unfair act or practice is one that is “likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” This provision is an important part of the Commission’s organic statute, and I pledge to enforce it, consistent with its purpose and statutory language, using the three-part test reflected therein. I agree that injury can include non-financial forms of harm, including prospective harm.

Deception is viewed as a subset of unfairness that can be analyzed on a truncated basis. The FTC’s Policy Statement on Deception provides that a practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances to their detriment. In modern usage, “to their detriment” has been replaced with “about a material issue.” It is viewed as a strict liability standard—if the elements described above are met, further analysis of costs and benefits typically is not necessary.

Question 2. The FTC’s Bureau of Economics provides valuable insight and analysis that supplements the FTC’s work. However, the FTC is, first and foremost, a law enforcement agency, not a regulatory agency. As such, economic analysis should play a complementary role, not a dispositive one. The FTC should enforce the FTC Act and the other laws under its jurisdiction according to legal doctrine, not economic analyses. As a commissioner, will you pledge to continue to further the FTC as a law enforcement agency in which the Bureau of Economics and economic analyses play a complimentary role, not a dispositive role? Will you pledge to enforce the law according to legal precedent?

Answer. If confirmed, I will enforce the terms of the FTC Act, together with corresponding guidelines and relevant judicial precedent. Of course, economic analysis plays an important role in identifying sectors of the economy where consumer injury is significant and/or growing; appropriately evaluating scientific, statistical, or other technical data; and analyzing the likely competitive effects of mergers and the potentially harmful effects of various types of conduct.

While I was Chief of Staff to FTC Chairman Muris, I saw how the use of economic analysis reshaped the FTC’s privacy program to focus on harm to consumers, leading to the National Do Not Call Registry, the agency’s cases against inadequate security provisions, and cases against major companies like Microsoft and Pfizer for privacy violations.

Question 3. Piracy continues to be a problem that plagues content providers. The Internet is filled with websites that provide pirated content and entertainment at the expense of the companies that produce the content. Moreover, many of these websites can harm consumers with unsafe or even fraudulent data and commercial practices. What can the FTC do to crack down on the illegal piracy of American entertainment and content?

Answer. I have not had an opportunity to consider the FTC’s role with respect to the narrow issue of piracy, but I understand that piracy impacts incentives to innovate. If confirmed, I look forward to consulting with FTC staff and my colleagues on the Commission regarding actions that can be taken by the FTC within the scope of its authority. To the extent piracy is accompanied by unfair and/or deceptive acts, including fraudulent data and commercial practices, I will support vigorous enforcement of Section 5.

Question 4. Fraudulent websites can deceive consumers by masquerading as legitimate hotel websites. Consumers who are fooled by these sites reserve rooms that do not exist or turn out to be different from what they reserved online. According to industry statistics, this particular fraud affects millions of consumers a year and costs the hotel industry hundreds of millions of dollars. I wrote former FTC Chairwoman Edith Ramirez about this issue in June 2015. Will you pledge to ensure that the FTC will work with other law enforcement entities (such as state attorneys general) to bring enforcement actions against fraudulent hotel websites?

Answer. The FTC has a long history of working cooperatively with other federal, state, and foreign agencies to bring bad actors to justice. If confirmed, I will support the FTC’s continued efforts to coordinate with other law enforcement authorities to halt practices that are unfair, deceptive, or both, including with respect to fraudulent hotel websites.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO
CHRISTINE S. WILSON

Question 1. The high prices of prescription drugs impose a heavy burden on consumers and are projected to continue to rise in the years to come. Some branded pharmaceutical companies refuse to provide generic drug companies branded samples needed for testing generic equivalents, particularly in the context of drugs subject to a Risk Evaluation Mitigation Strategy (REMS). This tactic can delay the introduction of affordable generic drugs for years. I introduced the Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act with Senators Grassley, Leahy, and Lee to provide a targeted solution to this problem. Do you believe that branded pharmaceutical companies withholding testing samples from generic drug companies can lead to consumer harm?

Answer. The Hatch-Waxman Act established a careful balance between preserving incentives to innovate and introducing generic competition for branded products. The FTC has observed over time that certain practices can skew this carefully established balance. During my tenure as Chief of Staff to Chairman Muris, the FTC conducted a 6(b) study that identified practices in the pharmaceutical industry that threatened to distort the careful balance struck in Hatch-Waxman. Based on these findings, the FTC made recommendations to Congress and the FDA regarding alterations to the Hatch-Waxman process. Many of those recommendations were subsequently implemented.

Certain branded manufacturer practices of which I am aware, relating to the withholding of branded drug samples from generic companies, have given me cause for concern. If confirmed, I would support the FTC in conducting further analysis of this issue and making recommendations to Congress and the FDA as appropriate.

Question 2. What can the FTC do, under existing law, to protect consumers and ensure that they benefit from generic drug competition?

Answer. The FTC has a rich history of working to promote competition in the pharmaceutical space. (In fact, during my first stint at the FTC while in law school, preserving competition in the pharmaceutical industry was a significant focus of my work.) It is my understanding that the FTC has investigated alleged competitive restraints involving Restricted Evaluation and Mitigation Strategies (REMS) and voluntary distribution issues, and has filed amicus briefs in private suits. If confirmed, I would talk with relevant personnel in the Bureau of Competition and the General Counsel's Office, as well as with my colleagues on the Commission, about the extent to which the FTC's existing authority appropriately can be used to address anti-competitive conduct in this arena.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
CHRISTINE S. WILSON

Question 1. What experience do you have working with State Attorneys General? What are your views regarding the Commission working with state law enforcement?

Answer. During my tenure as Chief of Staff to Chairman Tim Muris, the state attorneys general played an important role in many different matters involving both competition and consumer protection issues and competition advocacy efforts. From my experience in both government and private practice, I have found that state AGs are frequently more familiar with the details regarding local impacts of business practices and proposed mergers, and therefore complement the FTC's own efforts. In addition, as Mr. Phillips noted during the Feb. 14 hearing, the state AGs can be a useful "force multiplier" for the FTC. The relationship between the FTC and state AGs has been quite constructive, and if I am confirmed, I would endeavor to continue this tradition.

Question 2. In the Dodd-Frank Act of 2010, Congress gave the FTC extensive authority over the sale, servicing, and leasing of automobiles—charging it to protect consumers from abusive auto lending practices and granting it exclusive authority to draft rules governing unfair or deceptive acts or practices by automobile dealers. Would you support the FTC using its rulemaking authority to rein in unfair or deceptive acts or practices by automobile dealers?

Answer. The FTC enforces many laws applicable to auto dealers, including the FTC Act, the Truth in Lending Act (TILA) and Regulation Z; the Consumer Leasing Act (CLA) and Regulation M; the Equal Credit Opportunity Act (ECOA) and Regulation B; and the Fair Credit Reporting Act (FCRA). The agency also enforces various FTC rules, such as the Used Car Rule, the Holder Rule, the Furnisher Rule, and the Credit Practices Rule.

Since 2012, the FTC has brought 40 enforcement actions targeting deceptive and/or unfair practices in the auto marketplace undertaken by both independent and franchise dealers. These actions have included deceptive dealer advertising; deceptive and unfair practices in the finance office; deceptive title loan, debt collection, and debt relief practices; privacy and data security failures; deceptive warranty practices; deceptive green claims; and credit reporting violations.

If confirmed, I will consult with FTC staff and my colleagues on the Commission to determine whether a rulemaking would provide even greater benefits to auto consumers and even greater clarity to auto dealers about expected conduct.

Question 3. More than 17 million Americans are the victims of identity theft every year. This problem seems to increase year over year as identity theft scams seem to get more sophisticated.

Three years ago, the FTC established *IdentityTheft.gov*. This site is supposed to be a one-stop shop for victims of identity theft where they can easily freeze credit across the big three credit reporting agencies, and recover their stolen identities.

This website's functionality is limited, however, because of what appears to be a lack of engagement by the credit bureaus to make the site what it should be.

How would you engage with credit bureaus to ensure *IdentityTheft.gov* has a comprehensive suite of easy to use tools allowing victims of identity theft to recover as quickly as possible, with as little stress as possible? What are your expectations with respect to the role the credit reporting agencies should play in making *IdentityTheft.gov* an effective one-stop shop for identity theft victims?

Answer. Identity theft has been an important issue for consumers and, consequently, a significant focus of the FTC. If confirmed, I will consult with FTC staff and my colleagues on the Commission to determine how *IdentityTheft.gov* can be improved, including through greater cooperation from the credit reporting agencies, and will lend my support to implementing all appropriate measures.

Question 4. Would you support FTC's jurisdiction be expanded to include non-profits and charities so that it can act more swiftly to prevent and stop illegal conduct in the nonprofit sector?

Answer. I have not had an opportunity to study this important issue. If confirmed, I would consult with FTC staff and my colleagues on the Commission regarding this issue, and would welcome the opportunity to discuss it with Congress, as appropriate.

Question 5. Other Federal agencies charged with consumer protection make an array of data available on consumer complaints received. The FTC releases relatively very little data on companies receiving significant levels of complaints. Do you think the FTC should be more transparent about the complaints it receives?

Answer. It is my understanding that the FTC periodically publishes an analysis of the consumer complaints that it receives. As a general rule, I believe that greater flows of information lead to more informed consumers and more efficient markets. Here, it may be that more information could allow consumers to more effectively direct their business to providers of goods and services who deal fairly and honestly with their customers. If confirmed, I would consult with FTC staff and my colleagues on the Commission to determine the extent to which releasing additional and/or different types of information would advance this goal.

Question 6. The Consumer Financial Protection Bureau was created in response to the 2008 financial crisis and Great Recession after it became clear that our financial sector needed far more oversight to prevent a disaster of that magnitude from happening ever again. The current Administration seems intent on gutting this agency that serves a critical role in protecting Americans from irresponsible financial institutions. Of course, the CFPB and the FTC complement each other in their protection of consumers. How do you envision the FTC's role in holding financial institutions accountable?

Answer. If confirmed, I will vigorously enforce the FTC Act (and other laws and rules within the jurisdiction of the FTC) with respect to all industries, including financial services. I will also encourage the FTC to work closely with the CFPB, pursuant to the terms of the FTC/CFPB MOU, to ensure that consumers are protected.

Question 7. Other consumer protection agencies appear to be reducing the vigor of their enforcement work. In what way should this impact the priorities of the FTC?

Answer. The FTC excels at monitoring consumer complaints and then deploying resources accordingly. If confirmed, and in conjunction with my colleagues on the Commission, I would encourage FTC staff to continue its industry-monitoring processes to identify areas where consumers may be experiencing unfair or deceptive acts or practices and to deploy resources accordingly—particularly if those areas of concern are not being addressed elsewhere.

Question 8. In the past, the FTC has cracked down on for-profit colleges and vocational programs with strong enforcement actions. However, we're seeing these institutions continue to defraud Americans. A study conducted by The Century Foundation found that 98 percent of complaints asking for student loan forgiveness alleging fraud by colleges were from students attending for-profit institutions. If confirmed, how will you protect Americans from being scammed by such institutions?

Answer. If confirmed, I will work with FTC staff and my colleagues on the Commission to ensure that unfair or deceptive practices in all industries, including in the for-profit education space, are addressed.

Question 9. More than two of every three American households own a pet. The FTC has estimated they will spend \$10.2 billion on medications this year, of which more than \$5 billion require a prescription. It has been estimated that pet owners who can get a copy of their pet's prescription and shop around, could save 20 to 30 percent on branded medications and 50 percent when they purchase generics. This suggests that prescription portability can save pet owners billions of dollars every year—in addition to the savings in time and transportation if they can get those prescriptions filled while they are at the grocery store or pharmacy or delivered from an online pharmacy. Unlike with human medications, with our pets, the prescriber also dispenses the medication prescribed—setting up a conflict of interest whereby the prescriber is both a health care provider and a retailer.

In testimony in 2016, the FTC stated that “we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.” Do you agree with this conclusion?

Answer. Yes. I believe that prescription portability can foster beneficial competition.

Question 10. The prescribing and dispensing of human medications has long been separated. With eyeglasses and contact lenses, where prescribers also sell the products they prescribe, Federal law grants consumers the right to their prescriptions. Why should it be any different for pet owners with regards to medications for their pets?

Answer. As noted above, it would seem that prescription portability for pet medications would benefit consumers, assuming appropriate consideration of safety concerns. If confirmed, I would be very interested in discussing this issue with FTC staff, my colleagues on the Commission, industry stakeholders, and with the FDA.

Question 11. Manufacturers of pet medications can, and do offer inducements to veterinary clinics to prescribe and sell their medications. Do you think the public, and pet owners who spend billions of dollars annually on prescription pet medications have a right to know whether their vet clinic is receiving payments from the manufacturers of drugs that clinic prescribes?

Answer. This issue appears analogous to the marketing efforts of branded drug manufacturers undertaken with respect to prescribing physicians. If confirmed, I would be very interested in discussing this issue with FTC staff, my colleagues on the Commission, and with the FDA to determine whether there are actions the FTC could take to boost transparency and enhance competition.

Question 12. In 2003, Congress passed the Fairness to Contact Lens Consumers Act (“FCLCA”) to grant the 40 million Americans who wear contact lens wearers the right to copies of their prescriptions. The law also established a process for consumers to have their prescriptions verified when they purchase their lenses from a retailer other than the prescriber.

On September 3, 2015, the FTC launched its ten-year review of the Contact Lens Rule. The comment period closed on October 26, 2015, after the Commission received over 660 comments from a wide variety of stakeholders including optometrists, ophthalmologists, consumers, contact lens manufacturers and third-party contact lens sellers such as big box stores and online retailers.

On December 7, 2016, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) concluding that “compliance with the automatic prescription release provision could be substantially improved.” This is consistent with the comments of 20 State Attorneys General who reported to the Commission that: “[t]he States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a matter of course.” The NPRM also proposed the common sense solutions of having consumers sign an acknowledgement that they have received their prescriptions and clarifying the right of consumers and their chosen retailers to receive additional copies of those prescriptions.

If confirmed, will you prioritize finalizing this proposed rule, to help ensure all consumers will receive copies of their prescriptions, as Congress intended? Considering FTC's limited resources, and the significant resources that would be required

to take action against individual prescribers who are not in compliance with this requirement under the current rule, do you agree that the FTC's proposed rule is an efficient means of promoting compliance?

Answer. My understanding is that the FTC has received and is analyzing thousands of comments on this and related issues, and is holding a workshop in March on this topic. If confirmed, I will work with staff to understand the nature of the feedback received from consumers, industry, and others regarding how best to promote competition while preserving patient safety. I will then coordinate with my colleagues on the Commission to move forward accordingly.

Question 13. The FTC has not pursued any enforcement activity under the Military Lending Act, despite having the authority to enforce this important protection. If confirmed, would you support vigorous enforcement of the MLA?

Answer. If confirmed, I will vigorously enforce all laws and rules within the jurisdiction of the FTC, including the Military Lending Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
CHRISTINE S. WILSON

Question 1. The February 2013, the Federal Trade Commission published a report that found that five percent of consumers had errors on their credit reports that could result in less favorable terms for loans.

Based on that study, do you think the consumer reporting agencies (CRAs) comply with the Fair Credit Reporting Act (FCRA)'s requirement to "follow reasonable procedures to assure maximum possible accuracy" of credit reports? (15 USC 1681e(b))

Do you think the FTC should conduct a follow up study to see if error rates have improved?

If error rates continue to impact millions of Americans, what actions should the FTC take to enforce compliance with the FCRA?

Answer. The FCRA, originally passed in 1970 to prevent misuse of consumer information in insurance, employment, and credit transactions, is an important consumer protection statute. The Act allows use of credit information for "permissible purposes" that benefit consumers and requires notice to consumers when "adverse actions" are based on a credit report, enabling consumers to verify the accuracy of the information. The FTC played a key role in the reauthorization of the statute in the Fair and Accurate Credit Transactions Act ("FACTA") in 2003 that strengthened consumer protections, particularly against identity theft.

I have not had an opportunity to review the referenced study and the analysis and data underlying its conclusions, but look forward to doing so if confirmed. In conjunction with FTC staff familiar with the methodology and findings of the study, I will work with my colleagues on the Commission and other relevant agencies (including the CFPB) to understand the sources of errors on credit reports and the best ways to lower error rates, clearly an important goal. An additional study may be useful to advance this process, and additional enforcement may be justified by the facts uncovered during this process.

Question 2. Do you think the policies and practices of CRAs to handle consumer disputes are in compliance with the FCRA?

Answer. I do not have information sufficient to evaluate the facts and provide an informed answer to this question. If confirmed, I will consult with FTC staff and my colleagues on the Commission to determine whether the policies and practices of the CRAs are in compliance with the FCRA, other laws, and relevant orders, and take appropriate actions based on that evaluation.

Question 3. In 2015, the New York Attorney General reached a groundbreaking settlement with the three national consumer reporting agencies—Experian, Equifax, and TransUnion. The terms of the settlement require the CRAs to do more to ensure maximum possible accuracy of credit reports and to improve the dispute resolution process for consumers.

Do you think the terms of the settlement regarding dispute resolution represent best practices for CRAs' compliance with the FCRA's requirement that CRAs conduct a "reasonable reinvestigation" if the consumer disputes the accuracy of the information in his or her credit report? (15 USC 1681i)

Can the FTC use its current authorities to hold CRAs to higher standards when it comes to handling consumer disputes?

Answer. I have not had an opportunity to review the terms of the referenced settlement and how its provisions relate to the requirements of the FCRA. If confirmed, I will consult with FTC staff and my colleagues on the Commission (and the New York State AG's Office, as appropriate) to understand the extent to which the

settlement could be viewed as a set of best practices for FCRA purposes, and to assess whether the FTC has the authority to hold the CRAs to higher standards.

Question 4. What are your views on the adequacy of the Fair Credit Reporting Act enforcement regime?

Answer. During my tenure as Chief of Staff to Chairman Muris, the FTC undertook enforcement actions for order violations by CRAs. More recently, though, I have not had an opportunity to study this issue. If confirmed, I will consult with FTC staff and my colleagues on the Commission regarding the adequacy of the FCRA enforcement regime. Should the FTC need additional tools or resources, in conjunction with my fellow Commissioners, I would enter into a discussion with Congress.

Question 5. What are your views on the inclusion of medical debt in credit reports?

Answer. If confirmed, I look forward to consulting with FTC staff and my colleagues on the Commission regarding the kinds of debts that should be reflected in credit reports, as well as opportunities for CRAs to monitor the accuracy of information submitted by furnishers, so as to provide accurate information to potential lenders while preserving the intended consumer protections of the FCRA and Section 5 of the FTC Act.

Question 6. Consumers have the right to inspect their credit reports every year. Do you think they should also have the right to inspect their credit score?

Answer. It is my understanding that some companies provide credit scores to existing customers, and others offer credit scores free of charge to any consumer. If confirmed, I look forward to consulting with FTC staff and my colleagues on the Commission regarding the bundle of consumer rights necessary to preserve the intended consumer protections of the FCRA and Section 5 of the FTC Act.

Question 7. Do you think the credit reporting market is functioning well? In your view, what areas could be improved?

Answer. The credit reporting market serves the important goal of enabling consumers to smooth income streams over time. CRAs have assumed a vital role in assembling complex data and evaluating consumer credit and other information on consumers. To effectively capitalize on the benefits of credit, the credit reporting market must function well, which in turn requires lenders to have access to fair and accurate credit reporting. If confirmed, I look forward to consulting with FTC staff and my fellow Commissioners regarding how effectively the market is working today and what steps the FTC can take to improve its effectiveness.

Question 8. Do you think it is sound public policy for consumers to have to pay to freeze their credit report?

Answer. I have not had an opportunity to consider this issue. If confirmed, I look forward to consulting with FTC staff and my colleagues on the Commission regarding how this issue fits into the larger context of the intended consumer protections of the FCRA and Section 5 of the FTC Act.

Question 9. Do you think it is confusing for consumers to understand the difference between freezes, which are defined by and regulated under state law, and the CRAs' various "lock" products, which fall outside of the protection of state law?

Answer. I have not had an opportunity to consider this issue. If confirmed, I look forward to consulting with FTC staff and my colleagues on the Commission regarding the various products offered by the CRAs, how those are analyzed under state and Federal law, any resulting disconnects, and appropriate next steps to reduce any existing consumer confusion. The FTC's consumer education platform is robust and likely could be useful in addressing any consumer confusion in this area.

Question 10. Should the FTC have the authority to ensure compliance with the Safeguards Rule?

Answer. In conjunction with implementing the Gramm-Leach-Bliley Act, the FTC issued the Safeguards Rule. This rule, issued during my tenure as Chairman Muris' Chief of Staff, requires financial institutions under FTC jurisdiction to have measures in place to keep customer information secure. Since its issuance, the FTC has conducted important enforcement efforts pursuant to this rule, including its recent action against TaxSlayer. If confirmed, I would consult with FTC staff and my colleagues on the Commission to determine the status of the rule, and whether revisions (including to the FTC's scope of authority) would be appropriate. I would support FTC discussions with Congress, if appropriate, regarding the FTC's scope of authority.

Question 11. Do you think the FTC has the right expertise and capacity to investigate and evaluate algorithms for unfair, deceptive, fraudulent consumer practices in the marketplace?

Answer. I appreciate the discussions we had on this issue before the Feb. 14, 2018 confirmation hearing and at the hearing itself. I have had an opportunity to review some publicly available materials regarding the FTC's research in this area. If confirmed, I would talk with FTC staff and my colleagues on the Commission regarding the FTC's capacity and expertise in this arena. To the extent unfair and/or deceptive practices are occurring within the scope of the FTC's jurisdiction, I would support enforcement actions. And to the extent additional resources and/or tools are required to reach relevant conduct, in conjunction with my colleagues on the Commission, I would support a dialogue with Congress.

Question 12. Will you prioritize bringing in additional technical talent to strengthen FTC's mission in the digital domain?

Answer. As an increasing portion of the U.S. economy has moved online, the FTC has taken corresponding steps to increase its capabilities in this arena. For example, the FTC now has a Chief Technologist whose role is to advise the Commission on technology matters, including the FTC's use of technology, technical aspects of law enforcement actions, and technology policy recommendations. If confirmed, I would support efforts to ensure that the FTC has the resources and expertise necessary to carry out its mission effectively, including as it relates to the digital domain. To the extent additional resources and/or tools are required to reach relevant conduct, in conjunction with my colleagues on the Commission, I would welcome a discussion with Congress.

Question 13. What are your views of the FTC's ability to ensure adequate oversight of online privacy? Please include your perspective on the FTC's expertise and the adequacy of the regulatory tools available to it. What specific actions would you propose the FTC undertake to improve online privacy?

Answer. During my tenure as FTC Chief of Staff, the FTC spent a great deal of time on (and established important precedents with respect to) online privacy issues. Both before and since that period, the FTC has been quite active in, and consequently has developed significant expertise regarding, the issues in this arena. Moreover, the FTC has a variety of tools at its disposal, including the FTC Act and COPPA as well as a robust consumer and business education platform. If confirmed, I would discuss with FTC staff and my fellow Commissioners the additional actions that constructively could be taken in this arena, and what additional authority and tools may be required. If appropriate, and in conjunction with my colleagues on the Commission, I would welcome a discussion regarding any additional authority and tools necessary to effectively fulfill the FTC's mission in this important space.

Question 14. The FCC's Net Neutrality order is premised upon ISPs disclosing voluntary policies and the FTC enforcing compliance with those policies. Do you agree that the FTC's authority only extends to enforcing a company's compliance with whatever policy the company issues? If not, please explain.

If the Ninth Circuit's decision in *FTC v. AT&T Mobility* is allowed to stand, what authority, if any, will the FTC retain to enforce these company policies?

Answer. The extent of the FTC's authority over common carriers will be determined by the courts and Congress. If the FTC has jurisdiction, and if I am confirmed, I will coordinate with FTC staff and my colleagues on the Commission to ensure full and effective enforcement of all applicable laws within the FTC's jurisdiction, including those with respect to unfair and/or deceptive acts undertaken by ISPs. Furthermore, I will work with FTC staff and my colleagues on the Commission to identify any additional resources that may be necessary and will consult with Congress accordingly.

Question 15. What is your view of the propriety of the FTC imposing conditions on proposed mergers as compared with suing to block a deal? How would you evaluate when to use one or the other?

Answer. Merger remedies usefully can be employed when they are capable of preserving competition that otherwise would be lost by virtue of a proposed merger. But some proposed mergers may threaten to substantially lessen competition in ways that cannot be remedied. In those instances, suing to block would be appropriate. As Mr. Simons and I both discussed during our confirmation hearing, it will be important for the FTC to conduct detailed merger retrospectives to determine whether prior agency decisions to clear or block mergers (with and without remedies) produced the intended results. Those findings can then be used to determine whether merger policy changes are warranted.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
CHRISTINE S. WILSON

Question 1. What are your ideas how to promote consumer protection in an increasingly online—and connected—world?

Answer. Ensuring consumer protection in an increasingly online and connected world will require a multi-pronged approach. Among other things, the FTC will need to ensure that it is staying abreast of (or ahead of) the technological capabilities of bad actors. It will need to closely monitor developments in the marketplace, including through (1) collaboration with other federal, state, and foreign agencies, (2) the feedback of honest industry participants, and (3) careful analysis of consumer complaints. And it will need to work closely with other law enforcement agencies, both in the U.S. and abroad, to bring bad actors to justice. This set of tasks is complex and challenging. If confirmed, I will work with FTC staff and my colleagues on the Commission to identify any additional resources that may be necessary and will consult with Congress accordingly.

Question 2. Do you believe that the current FTC enforcement principles are sufficient to protect consumers? And do you believe the FTC has the resources necessary to protect consumers given the significant amount of work on the docket for the agency?

Answer. Yes, I believe that the FTC's enforcement authority under Section 5 of the FTC Act and other laws, together with corresponding precedent, is sufficient to protect consumers. That said, if confirmed, I will work with FTC staff and my colleagues on the Commission to identify any additional tools, resources and/or authority that may be necessary and will consult with Congress accordingly.

Question 3. In December, I wrote to the FTC, along with Senators Schumer and Blumenthal, asking for a workshop to discuss the increased use of "bots" to purchase large quantities of in-demand toys and items, particularly at Christmas. The FTC has confirmed that it will engage with key stakeholders to determine if a workshop is necessary. Will you commit to reviewing the record on this issue and to working with my office to determine next steps, including the possibility of legislation?

Answer. Yes.

Question 4. Last week, an article in TechCrunch showed how Facebook uses data from Onavo Protect, a subsidiary app, to gather data on its competitors; how Google uses its search rankings to demote alternate competitive sites; and Amazon's aggressive low pricing undercuts book publishers. Under your respective leadership, how will the FTC enforce the principles of unfair methods of competition against tech giants like Facebook, Google and Amazon to promote consumer welfare?

Answer. If confirmed as a Commissioner, within the jurisdiction of the FTC, I will follow the facts where they lead without regard to the identity or size of the company at issue. No entity is or should be above the law. Thus, for both competition and consumer protection issues, tech giants will be subject to the same "rules of the road" that the FTC applies to every other company.

Question 5. Following the FTC's approval of the Google/DoubleClick acquisition in 2007, then Commissioner Pamela Jones Harbor released a dissent detailing the need for the commission to "evaluate the implication of this kind of data merger from a competition as well as a consumer protection perspective." As commissioner, how would you use this framing of data mergers in evaluating mergers and acquisitions in the technology industry?

Answer. The analytical framework used for evaluating the likely competitive effects of mergers is broad and flexible. Thus, mergers involving technology companies should be evaluated in essentially the same way as other mergers. Namely, the reviewing agency should ask whether the proposed merger will inhibit competition in any way, including by raising prices, reducing output, limiting choice, decreasing quality, weakening privacy protections, or constraining innovation. If careful analysis of these factors reveals that a proposed merger is likely to substantially lessen competition, then the merger should be subject to enforcement action.

As Mr. Simons and I both discussed during our confirmation hearing, it will be important for the FTC to conduct detailed merger retrospectives to determine whether prior agency decisions to clear or block mergers, including those in the technology sector, produced the intended results. Those findings can then be used to determine whether merger policy changes are warranted.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO
CHRISTINE S. WILSON

Question 1. When Congress passed the Fairness to Contact Lens Consumers Act in 2004 it helped reduce barriers to retail competition in the contact lens market and led to lower prices for consumers. However, contact retailers sometimes sell patients contact lenses after the prescription has expired or fail to adequately verify the prescription in accordance to FCLCA. In some cases, this has led to dangerous eye and health conditions for the patient. How can the FTC work in coordination with the FDA, CDC and other Federal agencies to make sure contact lens patients are receiving high quality care and safe contact lenses?

Answer. The FTC has a rich history of working collaboratively with sister Federal agencies to ensure that their expertise is reflected in FTC policies. If these agencies have information relevant to the FCLCA and any proposed revisions, if confirmed, I will encourage FTC staff to coordinate with other relevant agencies as appropriate to ensure that issues pertaining to patient safety are given due consideration.

Question 2. In December 2016, the FTC issued a proposed change to the current Contact Lens Rule that mandated that all eye doctors obtain a signed acknowledgement form from each of their contact lens patients when they receive a copy of their prescription. Do you know of any other ways for patients to understand their right to their contact lens prescription that would be just as, if not, more effective than a written acknowledgement?

Answer. My understanding is that the FTC has received and is analyzing thousands of comments on this and related issues, and is holding a workshop in March on this topic. If confirmed, I will work with FTC staff to understand the nature of the feedback received from consumers, industry, and others regarding how best to promote competition while preserving patient safety, including alternate mechanisms to notify consumers of their rights under the Contact Lens Rule. I will then coordinate with my colleagues on the Commission to move forward accordingly.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
TO CHRISTINE S. WILSON

Question 1. Restoring Internet Freedom FCC–FTC MOU

Within the net neutrality MOU, signed between the FCC and FTC, regarding the FTC's authority it states: "*Congress has directed the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.*"

Therefore, can you say without reservation that you'll have what you will need, upon being confirmed at the FTC, to actually catch improper actions taken by Internet service providers toward consumers?

Answer. Until the FCC reclassified broadband as a common carrier service under Title II of the Communications Act in 2015, Internet service providers (ISPs) fell within the jurisdiction of the FTC. In its July 17, 2017 submission to the FCC, FTC staff noted that before this reclassification, the FTC used its consumer protection authority to protect broadband consumers, including in matters pertaining to the advertising, marketing, and billing of broadband services and those concerning privacy and data security. FTC staff noted in the same submission that, before this reclassification, the FTC also used its competition authority to protect consumers and the competitive process in Internet and Internet-related markets. FTC staff further noted that even today, the FTC is using its jurisdiction to address practices similar to those of concern in the net neutrality space.

Based on this lengthy historical expertise, I believe the FTC has the tools and expertise necessary to identify and act upon improper actions taken by ISPs toward consumers. If confirmed, and if the FTC has jurisdiction, I will coordinate with FTC staff and my colleagues on the Commission to identify any additional resources that may be necessary and will consult with Congress accordingly.

Question 2. Court Case on FTC Authority over "Common Carriers"

Unfortunately we still don't know the full FTC authority over common carriers, like in the case pending on AT&T, so I would like to hear what you anticipate will be FTC's authority going forward.

Answer. The extent of the FTC's authority over common carriers will be determined by the courts and Congress. If the FTC has jurisdiction, and if I am confirmed, I will coordinate with FTC staff and my colleagues on the Commission to ensure full and effective enforcement of all applicable laws within the FTC's jurisdiction. Furthermore, I will work with FTC staff and my colleagues on the Commis-

sion to identify any additional resources that may be necessary and will consult with Congress accordingly.

Question 3. Court Case on FTC Authority over “Common Carriers”

How you can ensure the FTC will even have the authority to enforce the limited principles covered in Chairman Pai’s weak form of net neutrality?

Answer. As noted above, the extent of the FTC’s authority over common carriers will be determined by the courts and Congress. If confirmed, I would support an FTC dialogue with Congress, if appropriate, regarding the proper scope of that authority.

Question 4. Court Case on FTC Authority over “Common Carriers”

And I would ask if you can provide me a true commitment to act on behalf of consumers who are impacted by less than fair practices by some in the telecommunications industry.

Answer. If confirmed, yes, as to conduct falling within the jurisdiction of the FTC and in conjunction with FTC staff and other Commissioners.

Question 5. Broad Positions on FTC’s Place on Net Neutrality

Can you please define for me what the lead telecommunications policy expert Federal agency is, in your opinion?

Answer. The Federal Communications Commission is responsible for implementing and enforcing America’s communications law and regulations. The FTC is charged with enforcing the FTC Act and many other laws governing competition and consumer protection. The FCC and the FTC shared jurisdiction over ISPs prior to the reclassification of broadband in 2015, and the FTC actively enforced competition and consumer protection laws against ISPs during this period. Moreover, the FTC coordinated closely with the FCC to implement the Do Not Call List under Chairmen Muris and Powell. Shared jurisdiction between sector-specific regulators and competition/consumer protection authorities appears in other industries, and can be an effective force for ensuring that consumers are protected and markets are operating efficiently.

Question 6. Broad Positions on FTC’s Place on Net Neutrality

Have you specifically recently read the MOU on net neutrality between the FCC and FTC, and do you support it in its entirety?

Answer. I have reviewed the FTC/FCC MOU. As in other instances in which a sectoral regulator shares jurisdiction and works closely with a consumer protection/competition authority, this MOU appears to create a cooperative framework that capitalizes on the strengths and expertise of each agency for the benefit of American consumers. As noted above, my experience in the joint efforts of the FTC and FCC to implement the Do Not Call initiative has led me to believe that constructive cooperation of this type does enhance the public interest. If confirmed, I will fully support the MOU’s implementation. Of course, I would want to discuss the MOU with FTC staff and my colleagues on the Commission to determine whether any revisions would further enhance the cooperative framework and benefit the American public.

Question 7. Broad Positions on FTC’s Place on Net Neutrality

What is your understanding of the capacity of the staff currently at the FTC, and do you think you can effectively execute this agreement enough to garner true public trust in ensuring a truly free and open internet?

Answer. My understanding is that total FTC staff levels are roughly similar to FTC staff levels prior to the 2015 reclassification. In comments submitted to the FCC, FTC staff described the robust enforcement efforts undertaken with respect to ISPs and the Internet prior to reclassification. Thus, my general sense based on public knowledge is that—all other things being equal—if the FTC is effectively deploying its resources, it likely has the capacity to effectively implement the MOU. If confirmed, I would consult with FTC staff regarding their capacity and whether any additional resources or tools would be required to execute this agreement fully.

Question 8. Broadband Internet Speed Honesty

I am aware that various state Attorneys General are concerned that a telecomm industry petition to the FCC on cost transparency, related to the advertisement of Internet speeds, quote “represents nothing more than the industry’s effort to shield itself from state law enforcement.”

Given the FTC’s mission regarding deceptive practices, can you speak to your perspective on whether this is fair consumer protection issue to be concerned about at FTC, given the prices and promises ISPs make to generate more business?

Answer. I have not studied the referenced petition to the FCC. That said, if the FTC has jurisdiction over ISPs, it would be appropriate for the FTC to analyze whether the advertisements and business practices of ISPs are lawful under Section 5 of the FTC Act, and to take action when they are not.

Question 9. FTC Investigation on GPS Tracking of Vehicles

Last year it was revealed that the Federal Trade Commission is investigating GPS tracking technologies used in the subprime auto loan industry, but my understanding is that no findings or rulings have been released. Going back as far as 2014, the New York Times had highlighted this as a concern. In their piece, they highlighted a troubling story of a mother in Las Vegas, Mary Bolender, who needed to get her child with a 103.5-degree fever to the ER, but her 2005 Chrysler van wouldn't start. As the piece says—"The cause was not a mechanical problem—it was her lender."

Now I have a number of concerns with their as a business practice, but can I get a commitment from you to continue to look into this issue and publically provide information on your findings and enforcement determinations in a timely manner?

Answer. Public materials indicate the FTC has undertaken some work on this issue. If confirmed, I will consult with FTC staff and my colleagues on the Commission to determine the extent to which findings and determinations can be disclosed regarding the FTC's work in this area, and also to ascertain whether additional analysis and/or enforcement would be appropriate.

Question 10. Franchise Business Oversight

The FTC has jurisdiction over franchise businesses. In my state, I have heard complaints from Subway franchisees that the Franchise Disclosure Document is written in favor of the franchisor in a way that can undermine their ability to succeed. Nevada's neighboring state of California has passed a bill protecting franchisees.

How can the FTC expand protections for franchisees so they can financially succeed?

Answer. The FTC enforces the Franchise Rule (adopted in 1979 and most recently amended in 2008), which is designed to give prospective purchasers of franchises the material information they need in order to weigh the risks and benefits of such an investment. If confirmed, I would consult with FTC staff and my colleagues on the Commission regarding the state of the Franchise Rule and its enforcement, and to determine whether additional steps (whether rule revisions, enforcement, or other actions) are warranted and within the jurisdiction of the FTC.

Question 11. Mortgage Closing Fraud

Thieves have been targeting mortgage closings, where they break into a realtor or title company's e-mail accounts. Then, they tell the homebuyer to wire money they have saved and borrowed to a bank account owned by the thieves.

How do you think the FTC can work with the Consumer Financial Protection Bureau to prevent these types of scams?

Answer. With respect to this question, and to the two following questions: Deceptive or unfair practices with respect to mortgage closing fraud, reverse mortgages, and debt collection present significant concerns. Under its own authority, and in close cooperation with the CFPB pursuant to the FTC/CFPB MOU, the FTC should continue to pursue these issues vigorously. Furthermore, the FTC's consumer education expertise should continue to be brought to bear on these and other important issues in the financial services space.

Question 12. Reverse Mortgages

Reverse mortgages are products sold to seniors to help them "age-in-place" and use their home equity as a means by which to responsibly pay their bills. Reverse mortgages can be sensible products, but sometimes have been falsely advertised to seniors. The FTC and the Consumer Financial Protection Bureau conducted a "sweep" of reverse mortgage advertisements, and a review of consumer complaints, and found that three reverse mortgage companies engaged in deceptive advertising which misled consumers.

Given the overlapping jurisdictions between the Consumer Financial Protection Bureau and the FTC, can you discuss how you envision the two entities work together to combat financial fraud, specifically scams impacting seniors?

Answer. Please see above.

Question 13. Debt Collection

Debt collectors generate more complaints to the FTC than any other industry. And in recent years, the CFPB has noted that debt collection remains the top complaint received by the Bureau from older Americans. Specifically, the Consumer Bureau identified several issues related to debt collection and seniors, including hounding calls, harassment and threats of impermissible Social Security garnishment.

How do you think the FTC could work with the CFPB to bring more rules-of-the-road to this part of the financial services marketplace to protect consumers—particularly seniors—from fraudulent practices?

Answer. Please see above.

Question 14. Merger Review Commitment

With increased multi-industry players growing in prominence by acquiring more businesses outside their core business model, can you commit to reviewing the horizontal merger guidelines, which have not directly addressed vertical mergers since 1984?

Answer. As Mr. Simons and I both discussed during our confirmation hearing, it will be important for the FTC to conduct detailed merger retrospectives to determine whether prior agency decisions to clear mergers (with and without remedies) adequately preserved competition and protected consumers. Using those findings, it would then be appropriate to determine whether policy changes are warranted with respect to mergers of all types.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
NOAH JOSHUA PHILLIPS

Question 1. Many online companies are engaging in targeted advertising. Using consumer data, companies can target what they deem to be the most relevant ads to consumers. Should there be more transparency into how the algorithms behind targeted advertising work so that consumers can see how they are being targeted for certain messages?

Answer. Enhancing the ability of advertisers to reach consumers who have a higher likelihood of wanting to purchase particular products can benefit both consumers and advertisers, but consumers are rightly interested in the means by which they are reached. If confirmed, I would be willing to explore this question with my colleagues and career staff.

Question 2. Would third party audits of algorithms be a reasonable way to ensure the algorithms are doing what companies claim and not harming competition or consumer choice? Is this something the FTC might consider looking into?

Answer. In my oral testimony before the Committee, I discussed the need of the FTC to keep abreast of trends in technology and business practices. The increasing use of algorithms in determining pricing and other questions is a good example of a trend that, I believe, the FTC needs to monitor closely. If confirmed, I would be interested in looking into this issue, including the question whether the audits you mention are a reasonable way to protect consumers and promote competition.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
NOAH JOSHUA PHILLIPS

Question 1. As a former Attorney General of Alaska, I always appreciated coordination with Federal agencies where appropriate, and the opportunity to communicate solutions that made the most sense for Alaskans. Given the importance of state attorneys general to the FTC's antitrust enforcement, please describe your views on the working relationship between the FTC and state attorneys general.

Answer. My view is that State Attorneys General can be a "force multiplier" to help the FTC deal with those who violate the law, and that they provide indispensable information about what is going on in their respective states. I believe that coordination between the FTC and State Attorneys General is important to the agency's mission.

Question 2. As you know, the state I represent is unique which means its problems are unique and require unconventional solutions. In a highly rural state like Alaska, many communities are not connected by roads, challenging weather conditions prohibit timely delivery of mail and other essential services, and quality connectivity is considered a luxury. One of your objectives at the Commission is consumer protection and education. How will you ensure that rural constituents like mine have the tools they need to make informed decisions and in cases of abuse that require follow up, for example data breaches or identity theft, the information necessary to mitigate risks and resolve the issue?

Answer. The consumer protection mission of the FTC extends to all Americans, whoever they are and wherever they live; and consumer education is an important part of that. If confirmed, I will work with staff and my colleagues to examine the FTC's performance of its objectives in rural areas, including Alaska. I would also look forward to working with your office on how the FTC can better serve Alaskans.

Question 3. In your prepared statement, you discuss anticompetitive consolidation, which immediately called to mind the enormous market capitalization of tech companies. Recent calculations value the four largest tech companies' capitalization at \$2.8 trillion dollars, which is a staggering 24 percent of the S&P 500 Top 50, close

to the value of every stock traded on the Nasdaq in 2001, and to give a different perspective, approximately the same amount as France's current GDP. Press reports have also noted allegations of increased anti-competitive behavior by some of these companies. Is there a point at which these companies are simply too big from an antitrust standpoint?

Answer. Like many Americans, I experience daily the profound impact these companies have on my life and the lives of those around me. Their size and scope is remarkable. Under our antitrust laws, size is not, in and of itself, a cause for concern. It may reflect success in providing consumers with products and services that they value, improving their welfare. But growth or the maintenance of market power through anticompetitive conduct can violate the law and hurt consumers, and the FTC has an important role to play in enforcing the law. That no one—and no corporation, no matter how large—is above the law is a bedrock principle of American justice. I believe the FTC should apply the law fairly and carefully, no matter who may be violating it.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEAN HELLER TO
NOAH JOSHUA PHILLIPS

Question. When Congress passed the Fairness to Contact Lens Consumers Act in 2003, it was a pro-consumer measure that ensured consumers automatically receive a copy of his or her prescription after an eye exam—without having to ask for it, pay an additional fee, or sign a waiver. Do you agree that consumers should receive copies of their prescriptions as Congress intended so that they can use the prescription to purchase their contact lenses from a source of their choosing?

Answer. Our constitutional system gives it to Congress to write the laws and the Executive Branch—including the FTC—to enforce them. The FTC should always strive to give effect to the intent of Congress, as reflected in the text of the laws it passes. As a consumer, I have certainly found it beneficial to be able to take my eyeglass prescriptions with me. As a nominee, I have not studied the Contact Lens Rule in depth. I do understand that the agency has received substantial input from a wide variety of stakeholders over several years, and is convening a workshop next month on the ongoing review of the Rule. If confirmed, I look forward to working with staff and my colleagues to review the results of that work to determine the best course forward as the FTC reviews the Contact Lens Rule.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
NOAH JOSHUA PHILLIPS

Question 1. The FTC is a relatively small agency that has to effectively use its resources to cover a very broad jurisdiction. In this regard, as a matter of discretion, it may be wise for the FTC to pursue enforcement cases involving practices that result in substantial harm. However, substantial harm is not a legal requirement under section five of the FTC Act—cases involving deception do not require harm at all, and cases involving unfairness can involve harm that is prospective and/or non-financial. Consequently, it is very important that commissioners do not stringently require types of harm as a legal test for agency enforcement actions. This principle is particularly important because Lab MD is challenging the FTC's legal authority to bring enforcement actions for data breaches based on the lack of requisite harm. As a commissioner, will you pledge to not require substantial harm or financial harm as legal tests for FTC enforcement actions?

Answer. If confirmed, I pledge to enforce the FTC Act as written, and consistent with legal precedent. Section 45(n) requires “substantial injury” in unfairness cases, but not deception cases. My understanding is that “substantial injury” is not limited specifically to financial harms.

Under the FTC's 1983 Policy Statement on Deception, the Commission will find deception “if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.” As the Policy Statement notes, the representation, omission or practice must be material.

Question 2. The FTC's Bureau of Economics provides valuable insight and analysis that supplements the FTC's work. However, the FTC is, first and foremost, a law enforcement agency, not a regulatory agency. As such, economic analysis should play a complementary role, not a dispositive one. The FTC should enforce the FTC Act and the other laws under its jurisdiction according to legal doctrine, not economic analyses. As a commissioner, will you pledge to continue to further the FTC

as a law enforcement agency in which the Bureau of Economics and economic analyses play a complimentary role, not a dispositive role? Will you pledge to enforce the law according to legal precedent?

Answer. I agree that the FTC's Bureau of Economics provides valuable insight and analysis, which plays an integral role in and supplements the FTC's work. If confirmed, I pledge to enforce the law according to legal precedent.

Question 3. Piracy continues to be a problem that plagues content providers. The Internet is filled with websites that provide pirated content and entertainment at the expense of the companies that produce the content. Moreover, many of these websites can harm consumers with unsafe or even fraudulent data and commercial practices. What can the FTC do to crack down on the illegal piracy of American entertainment and content?

Answer. The FTC is one of several Federal agencies that can deal with content piracy and the bad practices that sometimes attend it. The FTC can enforce the laws Congress has charged it with enforcing and engage in consumer and business education. The FTC has in the past conducted workshops dealing with malware-related issues, and maintains online outreach on them. The Commission also has brought enforcement actions against companies that surreptitiously downloaded such computer programs onto consumers' computers.

Question 4. Fraudulent websites can deceive consumers by masquerading as legitimate hotel websites. Consumers who are fooled by these sites reserve rooms that do not exist or turn out to be different from what they reserved online. According to industry statistics, this particular fraud affects millions of consumers a year and costs the hotel industry hundreds of millions of dollars. I wrote former FTC Chairwoman Edith Ramirez about this issue in June 2015. Will you pledge to ensure that the FTC will work with other law enforcement entities (such as state attorneys general) to bring enforcement actions against fraudulent hotel websites?

Answer. I believe that the FTC should work with other law enforcement entities, including State Attorneys General where appropriate. If confirmed, I will support the FTC's efforts to work with other law enforcement agencies, including State AGs, to address practices that are unfair or deceptive within the meaning of the FTC Act, including fraudulent hotel websites.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
NOAH JOSHUA PHILLIPS

Question 1. What experience do you have working with State Attorneys General? What are your views regarding the Commission working with state law enforcement?

Answer. Other than in my capacity as a Senate staffer, I do not have personal experience working with State Attorneys General. My general view is that they can be a "force multiplier" to help the FTC deal with those who violate the law, and that they provide indispensable information about what is going on in their respective states.

Question 2. In the Dodd-Frank Act of 2010, Congress gave the FTC extensive authority over the sale, servicing, and leasing of automobiles—charging it to protect consumers from abusive auto lending practices and granting it exclusive authority to draft rules governing unfair or deceptive acts or practices by automobile dealers. Would you support the FTC using its rulemaking authority to rein in unfair or deceptive acts or practices by automobile dealers?

Answer. As a nominee, I have not studied this question. If confirmed, I would be open to consulting with my colleagues and staff on it.

Question 3. More than 17 million Americans are the victims of identity theft every year. This problem seems to increase year over year as identity theft scams seem to get more sophisticated.

Three years ago, the FTC established *IdentityTheft.gov*. This site is supposed to be a one-stop shop for victims of identity theft where they can easily freeze credit across the big three credit reporting agencies, and recover their stolen identities.

This website's functionality is limited, however, because of what appears to be a lack of engagement by the credit bureaus to make the site what it should be.

How would you engage with credit bureaus to ensure *IdentityTheft.gov* has a comprehensive suite of easy to use tools allowing victims of identity theft to recover as quickly as possible, with as little stress as possible? What are your expectations with respect to the role the credit reporting agencies should play in making *IdentityTheft.gov* an effective one-stop shop for identity theft victims?

Answer. If confirmed, I look forward to consulting with my colleagues and career staff at the FTC regarding both *IdentityTheft.com* itself and the role that credit bureaus are playing—or not playing—in its success. My expectation is that those agencies will abide by legal obligations and commitments made to the FTC.

Question 4. Would you support FTC's jurisdiction be expanded to include non-profits and charities so that it can act more swiftly to prevent and stop illegal conduct in the nonprofit sector?

Answer. I understand the important arguments in favor of expanding the FTC's jurisdiction to include non-profits and charities. Before taking a position on the issue, however, I would consult with my fellow commissioners, career staff and members of Congress. I am interested in your view on this issue.

Question 5. Other Federal agencies charged with consumer protection make an array of data available on consumer complaints received. The FTC releases relatively very little data on companies receiving significant levels of complaints. Do you think the FTC should be more transparent about the complaints it receives?

Answer. I think transparency is an important virtue in government, and over the course of my Senate career have worked to improve laws like the Freedom of Information Act. If confirmed, I would consult with my colleagues and career staff to examine the FTC's practices with respect to publishing data on consumer complaints and, if warranted, support more transparency.

Question 6. The Consumer Financial Protection Bureau was created in response to the 2008 financial crisis and Great Recession after it became clear that our financial sector needed far more oversight to prevent a disaster of that magnitude from happening ever again. The current Administration seems intent on gutting this agency that serves a critical role in protecting Americans from irresponsible financial institutions. Of course, the CFPB and the FTC complement each other in their protection of consumers. How do you envision the FTC's role in holding financial institutions accountable?

Answer. Where financial institutions are subject to the jurisdiction of the FTC, I envision the agency enforcing the FTC Act, FCRA, FDCPA and other laws Congress has charged it with enforcing against them, where the facts and law warrant that enforcement. If confirmed, working with my colleagues, I would support such enforcement. The FTC and CFPB share responsibility for the enforcement of certain statutes, including ones that apply to financial institutions. The relationship between the two agencies is governed currently by a memorandum of understanding (MOU). The FTC should evaluate whether the MOU facilitates the optimal coordination between the agencies, and, if confirmed, I commit to working with my fellow commissioners to do so.

Question 7. Other consumer protection agencies appear to be reducing the vigor of their enforcement work. In what way should this impact the priorities of the FTC?

Answer. Our constitutional system gives it to Congress to write the laws and the Executive Branch—including the FTC—to enforce them. The FTC should thus be committed to the vigorous enforcement of the laws Congress has charged it to enforce, and that commitment should not be diminished by the decisions of other consumer protection agencies, whatever those decisions are. Where the FTC has authority and laws that fall under it are being violated, the FTC should be willing to enforce the law even if other agencies do not.

Question 8. In the past, the FTC has cracked down on for-profit colleges and vocational programs with strong enforcement actions. However, we're seeing these institutions continue to defraud Americans. A study conducted by The Century Foundation found that 98 percent of complaints asking for student loan forgiveness alleging fraud by colleges were from students attending for-profit institutions. If confirmed, how will you protect Americans from being scammed by such institutions?

Answer. The FTC has indeed brought enforcement actions against for-profit educational institutions, where they have violated the laws Congress has charged the agency to enforce. If confirmed, I would support continued enforcement of those laws, where the facts and the law warranted that enforcement. I also believe that the FTC's consumer education capabilities can be leveraged to help students make informed choices about their education and avoid being defrauded.

Question 9. More than two of every three American households own a pet. The FTC has estimated they will spend \$10.2 billion on medications this year, of which more than \$5 billion require a prescription. It has been estimated that pet owners who can get a copy of their pet's prescription and shop around, could save 20 to 30 percent on branded medications and 50 percent when they purchase generics. This suggests that prescription portability can save pet owners billions of dollars every

year—in addition to the savings in time and transportation if they can get those prescriptions filled while they are at the grocery store or pharmacy or delivered from an online pharmacy. Unlike with human medications, with our pets, the prescriber also dispenses the medication prescribed—setting up a conflict of interest whereby the prescriber is both a health care provider and a retailer.

In testimony in 2016, the FTC stated that “we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.” Do you agree with this conclusion?

Answer. As a nominee, I have not reviewed that testimony, or familiarized myself with the underlying factual record. That said, I agree generally that keeping markets (such as those for pet prescriptions) open and competitive is good for consumers. If confirmed, I plan to familiarize myself with this issue and consult with my colleagues, career staff and you and other interested members of Congress on that question.

Question 10. The prescribing and dispensing of human medications has long been separated. With eyeglasses and contact lenses, where prescribers also sell the products they prescribe, Federal law grants consumers the right to their prescriptions. Why should it be any different for pet owners with regards to medications for their pets?

Answer. Keeping markets open and competitive can benefit consumers, and their pets. As a nominee, I have not familiarized myself with the pet medication market sufficiently to give an adequate answer. If confirmed, I would plan to do so, and to consult with my colleagues, career staff and you and other interested members of Congress on an appropriate path forward.

Question 11. Manufacturers of pet medications can, and do offer inducements to veterinary clinics to prescribe and sell their medications. Do you think the public, and pet owners who spend billions of dollars annually on prescription pet medications have a right to know whether their vet clinic is receiving payments from the manufacturers of drugs that clinic prescribes?

Answer. There are times when mandated disclosures can add important information that make markets more transparent and competitive. As a nominee, I have not familiarized myself with the specific issue you raise. If confirmed, I would plan to learn more about it and to consult with my colleagues and career staff.

Question 12. In 2003, Congress passed the Fairness to Contact Lens Consumers Act (“FCLCA”) to grant the 40 million Americans who wear contact lens wearers the right to copies of their prescriptions. The law also established a process for consumers to have their prescriptions verified when they purchase their lenses from a retailer other than the prescriber.

On September 3, 2015, the FTC launched its ten-year review of the Contact Lens Rule. The comment period closed on October 26, 2015, after the Commission received over 660 comments from a wide variety of stakeholders including optometrists, ophthalmologists, consumers, contact lens manufacturers and third-party contact lens sellers such as big box stores and online retailers.

On December 7, 2016, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) concluding that “compliance with the automatic prescription release provision could be substantially improved.” This is consistent with the comments of 20 State Attorneys General who reported to the Commission that: “[t]he States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a matter of course.” The NPRM also proposed the common sense solutions of having consumers sign an acknowledgement that they have received their prescriptions and clarifying the right of consumers and their chosen retailers to receive additional copies of those prescriptions.

If confirmed, will you prioritize finalizing this proposed rule, to help ensure all consumers will receive copies of their prescriptions, as Congress intended? Considering FTC’s limited resources, and the significant resources that would be required to take action against individual prescribers who are not in compliance with this requirement under the current rule, do you agree that the FTC’s proposed rule is an efficient means of promoting compliance?

Answer. Next month, the FTC will conduct a workshop to evaluate the proposed changes to the Contact Lens Rule. If confirmed, I look forward to working with my colleagues and career staff to evaluate the knowledge gleaned both from the comments received on the Contact Lens Rule over the past few years and additional information that may come from the workshop, including with respect to the efficiency of the proposed rule.

Question 13. The FTC has not pursued any enforcement activity under the Military Lending Act, despite having the authority to enforce this important protection. If confirmed, would you support vigorous enforcement of the MLA?

Answer. Yes.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
NOAH JOSHUA PHILLIPS

Question 1. The February 2013, the Federal Trade Commission published a report that found that five percent of consumers had errors on their credit reports that could result in less favorable terms for loans.

Based on that study, do you think the consumer reporting agencies (CRAs) comply with the Fair Credit Reporting Act (FCRA)'s requirement to "follow reasonable procedures to assure maximum possible accuracy" of credit reports? (15 USC 1681e(b))

Do you think the FTC should conduct a follow up study to see if error rates have improved?

If error rates continue to impact millions of Americans, what actions should the FTC take to enforce compliance with the FCRA?

Do you think the policies and practices of CRAs to handle consumer disputes are in compliance with the FCRA?

In 2015, the New York Attorney General reached a groundbreaking settlement with the three national consumer reporting agencies—Experian, Equifax, and TransUnion. The terms of the settlement require the CRAs to do more to ensure maximum possible accuracy of credit reports and to improve the dispute resolution process for consumers.

Do you think the terms of the settlement regarding dispute resolution represent best practices for CRAs' compliance with the FCRA's requirement that CRAs conduct a "reasonable reinvestigation" if the consumer disputes the accuracy of the information in his or her credit report? (15 USC 1681i)

Can the FTC use its current authorities to hold CRAs to higher standards when it comes to handling consumer disputes?

What are your views on the adequacy of the Fair Credit Reporting Act enforcement regime?

What are your views on the inclusion of medical debt in credit reports?

Consumers have the right to inspect their credit reports every year. Do you think they should also have the right to inspect their credit score?

Do you think the credit reporting market is functioning well? In your view, what areas could be improved?

Do you think it is sound public policy for consumers to have to pay to freeze their credit report?

Do you think it is confusing for consumers to understand the difference between freezes, which are defined by and regulated under state law, and the CRAs' various "lock" products, which fall outside of the protection of state law?

Answer. As you and I have discussed, I am aware of the important role that credit reporting agencies play in the economy and the lives of individual American consumers, including in particular the negative role that CRAs' mistakes can have upon those consumers. As a nominee, I have not been briefed by agency staff on these issues, or studied this market, including its evolution, common practices and governing state and Federal laws, in sufficient depth to give adequate answers to questions 1–8. Without doubt, these questions address important issues. If confirmed, I look forward to being briefed on them, and consulting with my colleagues, staff and, where appropriate, your office on these questions.

Question 2. Should the FTC have the authority to ensure compliance with the Safeguards Rule?

Answer. Pursuant to the Gramm-Leach-Bliley Act, the FTC promulgated the Safeguards Rule, which requires financial institutions under FTC jurisdiction to have measures in place to keep customer information secure. My understanding is that the FTC has brought several enforcement actions. If confirmed, I will consult with staff and my colleagues about the status of the Rule, including any proposed revisions to the scope of authority.

Question 3. Do you think the FTC has the right expertise and capacity to investigate and evaluate algorithms for unfair, deceptive, fraudulent consumer practices in the marketplace?

Answer. As we discussed, the proliferating use of algorithms raise novel consumer protection questions, as well potentially as antitrust ones. This is the kind of changing market practice I had in mind when I testified that the agency needs to keep

abreast of trends in the market. If confirmed, I commit to looking into whether the FTC has the right expertise and capacity.

Question 4. Will you prioritize bringing in additional technical talent to strengthen FTC's mission in the digital domain?

Answer. Yes.

Question 5. What are your views of the FTC's ability to ensure adequate oversight of online privacy? Please include your perspective on the FTC's expertise and the adequacy of the regulatory tools available to it. What specific actions would you propose the FTC undertake to improve online privacy?

Answer. The FTC is the Federal agency with the most experience and best ability to police issues related to online privacy. The Commission hones its expertise by interfacing with scholars and stakeholders on privacy questions, most notably at its "PrivacyCon" conferences. Acting Chairman Ohlhausen has stressed the importance of additional research to understand the economics of privacy and consumer harm, and I believe continuing those efforts is essential. Of course, the FTC also must enforce the law, including the FTC Act. To the extent inadequate privacy practices constitute unfair or deceptive ones under Section 5, the Commission should also consider bringing enforcement actions.

Question 6. The FCC's Net Neutrality order is premised upon ISPs disclosing voluntary policies and the FTC enforcing compliance with those policies.

Do you agree that the FTC's authority only extends to enforcing a company's compliance with whatever policy the company issues? If not, please explain.

Answer. No. To the extent practices related to net neutrality constitute antitrust violations or unfair practices under Section 5 of the FTC Act, the Commission would be able to bring enforcement actions under those laws.

Question 7. If the Ninth Circuit's decision in *FTC v. AT&T Mobility* is allowed to stand, what authority, if any, will the FTC retain to enforce these company policies?

Answer. The impact of the pending proceedings in the U.S. Court of Appeals for the Ninth Circuit remains to be seen, and will depend upon what that court decides. The courts and Congress together will define the FTC's enforcement authority.

Question 8. What is your view of the propriety of the FTC imposing conditions on proposed mergers as compared with suing to block a deal? How would you evaluate when to use one or the other?

Answer. My general view is that remedies are best calibrated depending on the facts and law that apply to a particular merger. The FTC will sometimes demand divestitures ("structural remedies") and sometimes changes to conduct ("behavioral remedies") in order to approve a merger. Sometimes, the parties cannot agree on those remedies and litigation may be appropriate and advisable. If confirmed, in every case that comes before the Commission, I would consider the recommendations of staff and work with my fellow commissioners to determine the best approach to protect competition and consumers.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
NOAH JOSHUA PHILLIPS

Question 1. What are your ideas how to promote consumer protection in an increasingly online—and connected—world?

Answer. The increasing and constantly-changing role of online commerce makes consumer protection an ever more difficult task. As I indicated in my questionnaire to the Committee and hearing testimony, I believe that one of the FTC's top priorities must be keeping abreast of trends in technology and business practices. It must understand the technology and study the economics of how it is used and impacts consumers, listening at all times to input from other law enforcement agencies, consumers and other important stakeholders. Where appropriate, the FTC should leverage its research, consumer and business education and enforcement resources to protect consumers online.

Question 2. Do you believe that the current FTC enforcement principles are sufficient to protect consumers? And do you believe the FTC has the resources necessary to protect consumers given the significant amount of work on the docket for the agency?

Answer. Congress has given the FTC significant authority to protect consumers, notably including the FTC Act's proscription of unfair or deceptive acts or practices, and unfair methods of competition. With respect to that authority and resources, if confirmed, I will work with my fellow Commissioners and staff to evaluate the sufficiency of each and, if necessary, with Congress to remedy any deficiencies.

Question 3. In December, I wrote to the FTC, along with Senators Schumer and Blumenthal, asking for a workshop to discuss the increased use of “bots” to purchase large quantities of in-demand toys and items, particularly at Christmas. The FTC has confirmed that it will engage with key stakeholders to determine if a workshop is necessary. Will you commit to reviewing the record on this issue and to working with my office to determine next steps, including the possibility of legislation?

Answer. Yes.

Question 4. Last week, an article in *TechCrunch* showed how Facebook uses data from Onavo Protect, a subsidiary app, to gather data on its competitors; how Google uses its search rankings to demote alternate competitive sites; and Amazon’s aggressive low pricing undercuts book publishers. Under your respective leadership, how will the FTC enforce the principles of unfair methods of competition against tech giants like Facebook, Google and Amazon to promote consumer welfare?

Answer. I believe the FTC should apply the law fairly and carefully, no matter who is violating it. No one, from boiler room scam artists to the largest companies in the United States, is above the law. In dynamic markets like technology in particular, the FTC must also keep abreast of changing trends; watching how they develop and seeing how our laws, including consumer protection and antitrust, apply. If confirmed, I will work with my fellow Commissioners to see that the agency keeps track of these trends and, where violations of the law occur, enforces it.

Question 5. Following the FTC’s approval of the Google/DoubleClick acquisition in 2007, then Commissioner Pamela Jones Harbor released a dissent detailing the need for the commission to “evaluate the implication of this kind of data merger from a competition as well as a consumer protection perspective.” As commissioner, how would you use this framing of data mergers in evaluating mergers and acquisitions in the technology industry?

Answer. That no one—and no corporation, no matter how large—is above the law is a bedrock principle of American justice. I believe the FTC should apply the law fairly and carefully, no matter who may be violating it. In dynamic markets like technology in particular, it must also keep abreast of changing trends. The increasingly important role of data is one such trend, and the FTC has already begun important work in studying it. The law governing mergers and the FTC standards for evaluating them are well-established, and should be applied rigorously in evaluating mergers and acquisitions in the technology industry. Where a merger violates Section 7 of the Clayton Act—that is, where a merger’s effects may be substantially to lessen competition, or to tend to create a monopoly, it should be subject to enforcement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO
NOAH JOSHUA PHILLIPS

Question 1. When Congress passed the Fairness to Contact Lens Consumers Act in 2004 it helped reduce barriers to retail competition in the contact lens market and led to lower prices for consumers. However, contact retailers sometimes sell patients contact lenses after the prescription has expired or fail to adequately verify the prescription in accordance to FCLCA. In some cases, this has led to dangerous eye and health conditions for the patient. How can the FTC work in coordination with the FDA, CDC and other Federal agencies to make sure contact lens patients are receiving high quality care and safe contact lenses?

Answer. The FTC has a long tradition of working cooperatively with other agencies in the Federal Government that may have expertise that can be brought to bear on issues it confronts. If confirmed, I will work to determine whether and to what extent the FTC is working with the FDA, CDC and other agencies with applicable expertise in the context of the re-consideration of the Contact Lens Rule.

Question 2. In December 2016, the FTC issued a proposed change to the current Contact Lens Rule that mandated that all eye doctors obtain a signed acknowledgment form from each of their contact lens patients when they receive a copy of their prescription. Do you know of any other ways for patients to understand their right to their contact lens prescription that would be just as, if not, more effective than a written acknowledgement?

Answer. As a nominee, I have not studied the relative efficacy of available methods of helping patients understand their rights under the Contact Lens Rule. I do understand that the agency has received substantial input from a wide variety of stakeholders over several years, and is convening a workshop next month on this

issue. If confirmed, I look forward to reviewing the results of that work to determine the best course forward as the FTC reviews the Contact Lens Rule.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
TO NOAH JOSHUA PHILLIPS

Question 1. Restoring Internet Freedom FCC–FTC MOU

Within the net neutrality MOU, signed between the FCC and FTC, regarding the FTC’s authority it states: “*Congress has directed the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.*”

Therefore, can you say without reservation that you’ll have what you will need, upon being confirmed at the FTC, to actually catch improper actions taken by Internet service providers toward consumers?

Answer. Through the FTC Act, Congress has given the FTC significant authority to protect consumers. According to the FTC staff, prior to the FCC’s 2015 reclassification of Internet service providers as “common carriers” under Title II of the Telecommunications Act, the FTC used its consumer protection and antitrust authorities to protect broadband consumers and the competitive process in Internet-related markets.

Through the appropriations process, Congress has provided the FTC with funds to operate. With respect to the adequacy of its legal authority and financial resources, if confirmed, I will work with my fellow Commissioners and staff to evaluate these and, if necessary, discuss with Congress potential remedies to any deficiencies.

Question 2. Court Case on FTC Authority over “Common Carriers”

Unfortunately we still don’t know the full FTC authority over common carriers, like in the case pending on AT&T, so I would like to hear what you anticipate will be FTC’s authority going forward.

Answer. The *en banc* panel of the U.S. Court of Appeals for the Ninth Circuit has not issued a ruling in the pending litigation involving *AT&T Mobility*. Currently, the FTC has authority over the activities of common carriers. But the courts, and Congress, will determine whether and to what extent that authority continues. In the event the FTC does not prevail in the litigation, I would support seeking a writ of certiorari from the Supreme Court. If confirmed, and if warranted, I will work with my fellow Commissioners and staff to determine whether additional authority is necessary. If so, I would support engagement with Congress on that.

Question 3. Court Case on FTC Authority over “Common Carriers”

How you can ensure the FTC will even have the authority to enforce the limited principles covered in Chairman Pai’s weak form of net neutrality?

Answer. The FTC has important authority to protect consumers under the FTC Act. The FCC, Congress and, as applicable, the courts will collectively determine whether the FTC has authority to enforce the net neutrality principles covered in the FCC’s order. If confirmed, I would support a discussion with Congress on what the proper scope of that authority should be, if such discussion proves necessary.

Question 4. Court Case on FTC Authority over “Common Carriers”

And I would ask if you can provide me a true commitment to act on behalf of consumers who are impacted by less than fair practices by some in the telecommunications industry.

Answer. Yes, if confirmed, I will commit to enforce the laws passed by Congress to protect consumers, including from unfair or deceptive acts or practices subject to the FTC’s jurisdiction.

Question 5. Broad Positions on FTC’s Place on Net Neutrality

Can you please define for me what the lead telecommunications policy expert Federal agency is, in your opinion?

Answer. The FCC is the principal Federal telecommunications regulatory agency. The FTC has long enforced its antitrust and consumer protection authorities, including against telecommunications companies. Each agency has expertise about the matters within its jurisdiction. If confirmed, I would support the Commission continuing to enforce its authority, as permitted by law.

Question 6. Broad Positions on FTC’s Place on Net Neutrality

Have you specifically recently read the MOU on net neutrality between the FCC and FTC, and do you support it in its entirety?

Answer. Yes. My view is that, until withdrawn or modified, a memorandum of understanding validly entered into by the FTC should continue to bind the Commission.

Question 7. Broad Positions on FTC's Place on Net Neutrality

What is your understanding of the capacity of the staff currently at the FTC, and do you think you can effectively execute this agreement enough to garner true public trust in ensuring a truly free and open internet?

Answer. The FTC boasts over a thousand professionals, including lawyers, technologists, economists and support staff. I have great faith in their collective capacity, which is based upon my understanding of their demonstrated ability to enforce the FTC Act and other laws in complex industries, including those with technology that is difficult to master. In its submission to the FCC last year, the FTC staff detailed the Commission's experience with Internet service providers, telecommunications companies and internet-related issues. If confirmed, I would consult with my colleagues and FTC staff to determine whether additional resources are necessary for the Commission effectively to execute its commitments.

Question 8. Supposed Transparency and ISP's Public Policies

The net neutrality MOU between the FCC-FTC states: *Consistent with its jurisdiction, the FTC will investigate and take enforcement action as appropriate against Internet service providers for unfair, deceptive, or otherwise unlawful acts or practices, including but not limited to, actions pertaining to the accuracy of the disclosures such providers make pursuant to the Internet Freedom Order's requirements, as well as their marketing, advertising, and promotional activities.*

Do you have a sense that you can ask ISPs to amend their supposed transparent blocking and throttling language or commitments?

In other words, is it your opinion that your authority at the FTC includes determining whether the ISPs are being transparent or in other cases, just presenting a very broad policy that leaves gaps in a consumer's understanding of their providers' protections or limitations to control the flow of information to them?

Answer. My understanding is that the transparency measures in the FCC's order are intended to give the FTC additional tools to police net neutrality-related conduct by Internet service providers that may violate the FTC Act. Under the MOU, the FTC indicates that it will investigate and take enforcement action as appropriate against ISPs concerning the accuracy of those disclosures, as well as other deceptive or unfair acts or practices involving their broadband services.

Question 9. Broadband Internet Speed Honesty

I am aware that various state Attorneys General are concerned that a telecomm industry petition to the FCC on cost transparency, related to the advertisement of Internet speeds, quote "represents nothing more than the industry's effort to shield itself from state law enforcement."

Given the FTC's mission regarding deceptive practices, can you speak to your perspective on whether this is fair consumer protection issue to be concerned about at FTC, given the prices and promises ISPs make to generate more business?

Answer. I am not familiar with the specific petition to the FCC in question. That said, the FTC can and should concern itself with any activities within its jurisdiction that may constitute violations of either the antitrust or consumer protection provisions of the FTC Act.

Question 10. FTC Investigation on GPS tracking of Vehicles

Last year it was revealed that the Federal Trade Commission is investigating GPS tracking technologies used in the subprime auto loan industry, but my understanding is that no findings or rulings have been released. Going back as far as 2014, the New York Times had highlighted this as a concern. In their piece, they highlighted a troubling story of a mother in Las Vegas, Mary Bolender, who needed to get her child with a 103.5-degree fever to the ER, but her 2005 Chrysler van wouldn't start. As the piece says—"The cause was not a mechanical problem—it was her lender."

Now I have a number of concerns with their as a business practice, but can I get a commitment from you to continue to look into this issue and publically provide information on your findings and enforcement determinations in a timely manner?

Answer. I understand the FTC has done some work on this issue. If confirmed, I commit that I will consult with my colleagues and FTC staff to determine the amount of information regarding findings and determinations that appropriately can be disclosed.

Question 11. Franchise Business Oversight

The FTC has jurisdiction over franchise businesses. In my state, I have heard complaints from Subway franchisees that the Franchise Disclosure Document is written in favor of the franchisor in a way that can undermine their ability to succeed. Nevada's neighboring state of California has passed a bill protecting franchisees.

How can the FTC expand protections for franchisees so they can financially succeed?

Answer. To the extent conduct by franchisors violates the requirements of the FTC's Franchise Rule, or the FTC Act, that conduct deserves scrutiny by the agency.

Question 12. Mortgage Closing Fraud

Thieves have been targeting mortgage closings, where they break into a realtor or title company's e-mail accounts. Then, they tell the homebuyer to wire money they have saved and borrowed to a bank account owned by the thieves.

How do you think the FTC can work with the Consumer Financial Protection Bureau to prevent these types of scams?

Answer. For the better part of a century, the FTC has worked to protect consumers against scams such as these using its authority to police unfair or deceptive acts or practices. If confirmed, I will work with my fellow commissioners to ensure that it continues to do so. The FTC shares with the CFPB certain legal authorities related to consumer finance, and their relationship is governed by a memorandum of understanding (MOU). The agencies should work in accordance with that MOU, collaboratively and in a way that leverages each of their expertise and capabilities. The FTC should evaluate whether the MOU facilitates the optimal coordination between the agencies, and, if confirmed, I commit to working with my fellow commissioners to do so. The FTC also has specific experience with consumer education, which can also be used to help consumers avoid scams such as these.

Question 13. Reverse Mortgages

Reverse mortgages are products sold to seniors to help them "age-in-place" and use their home equity as a means by which to responsibly pay their bills. Reverse mortgages can be sensible products, but sometimes have been falsely advertised to seniors. The FTC and the Consumer Financial Protection Bureau conducted a "sweep" of reverse mortgage advertisements, and a review of consumer complaints, and found that three reverse mortgage companies engaged in deceptive advertising which misled consumers.

Given the overlapping jurisdictions between the Consumer Financial Protection Bureau and the FTC, can you discuss how you envision the two entities work together to combat financial fraud, specifically scams impacting seniors?

Answer. My understanding is that seniors are sometimes especially susceptible to financial fraud, and are often targeted by bad actors. The FTC has a long and proud tradition of policing fraud, and in particular of protecting seniors, service members and other vulnerable and targeted groups. The legal actions taken just days ago, in conjunction with the Department of Justice and the Attorney General of the State of Missouri, are good examples of that tradition, which, if confirmed, I look forward to working with my fellow commissioners to continue.

As I noted above, the FTC shares with the CFPB certain legal authorities related to consumer finance, and their relationship is governed by an MOU. The agencies should work in accordance with it, collaboratively and in a way that leverages each of their expertise and capabilities. The recent sweep is an example of that. The FTC should evaluate whether the MOU facilitates the optimal coordination between the agencies, and, if confirmed, I commit to working with my fellow commissioners to do so. The FTC also has specific experience with consumer education, which can be used to help consumers avoid scams such as these.

Question 14. Debt Collection

Debt collectors generate more complaints to the FTC than any other industry. And in recent years, the CFPB has noted that debt collection remains the top complaint received by the Bureau from older Americans. Specifically, the Consumer Bureau identified several issues related to debt collection and seniors, including hounding calls, harassment and threats of impermissible Social Security garnishment.

How do you think the FTC could work with the CFPB to bring more rules-of-the-road to this part of the financial services marketplace to protect consumers—particularly seniors—from fraudulent practices?

Answer. The FTC enforces a number of Federal laws, notably the Fair Debt Collection Practices Act, in conjunction with the CFPB. Seniors are sometimes susceptible to illegal debt collection conduct, and are often targeted with it. The CFPB reports annually on its enforcement progress to Congress. If confirmed, I would support Commission efforts to evaluate what is working and what is not with respect to protecting seniors from illegal practices. The FTC should evaluate whether the MOU with the CFPB facilitates the optimal coordination between the agencies; and, if confirmed, I commit to working with my fellow commissioners to do so.

Question 15. Merger Review Commitment

With increased multi-industry players growing in prominence by acquiring more businesses outside their core business model, can you commit to reviewing the hori-

zontal merger guidelines, which have not directly addressed vertical mergers since 1984?

Answer. The Horizontal Merger Guidelines have provided market participants with important guidance about how both the Department of Justice Antitrust Division and the FTC consider horizontal mergers. They are designed primarily to articulate the analytical framework the Agencies apply in determining whether a merger's effects may be substantially to lessen competition, and are updated periodically to reflect changes in that approach, prompted by changes in the caselaw or otherwise. As you state, the "guidelines" framework for evaluating vertical mergers has not been updated since 1984, although both agencies have provided additional guidance on the analytical framework for evaluating such conduct. If confirmed, I commit to working with my colleagues, career staff and the DOJ Antitrust Division to review merger guidelines as necessary.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
ROHIT CHOPRA

Question 1. The FTC is responsible for enforcing the Nation's antitrust laws. While I appreciate that you are not an antitrust attorney, do you nevertheless have any experience in this area? For example, have you worked on any antitrust or competition policy issues during your professional career? If not, what aspects of your professional experience do you believe make you qualified to consider and render decisions in antitrust matters, should you be confirmed?

Answer. Yes, I have been involved in competition issues in my professional career. For example, I helped to develop the Consumer Financial Protection Bureau's market monitoring function that included monitoring of competitive intensity. This function aggregated publicly-available data to provide a range of evidence-based insights, including where consumer welfare might be enhanced through more competition.

Specifically, the analysis identified that net interest margins for private student loan products were not narrowing, unlike margins for other products. I led an effort to engage capital markets participants and industry innovators to remove perceived regulatory barriers to private student loan refinancing. Market participants have noted that this work helped to provide greater certainty and incubate more competition and shopping by borrowers, helping them to achieve better products at lower prices.

I was also involved in law enforcement efforts that asserted claims of alleged violations of "unfair or deceptive acts and practices," pursuant to the Consumer Financial Protection Act (CFPA). The CFPA is modeled after Section 5 of the Federal Trade Commission Act. As a policy leader for the student loan market vertical, I was closely involved in analysis to determine whether any alleged practices could be justified by countervailing benefits to competition.

In another example of competition advocacy, I was closely involved in the development of the Financial Aid Shopping Sheet, an effort to help make costs and risks of borrowing for college more transparent, while also facilitating more competition between institutions of higher education in the financial aid process. I drafted the original prototype made available for public comment. The CFPB and the Department of Education released a final version of the Shopping Sheet, which was voluntarily adopted by thousands of institutions of higher education.

While serving at Special Adviser to the Secretary of Education, I served as an agency representative to the interagency process seeking to implement Executive Order 13725, signed in 2016 by President Obama to promote competition across sectors of the economy. While at the Education Department, I was also involved in policy development on how the agency should consider changes in control and changes in ownership (mergers and acquisitions), which required the Secretary's approval with respect to institutions of higher education.

In my private sector career, I advised both large companies and small investment firms on strategic acquisitions. Analyzing these potential acquisitions included extensive empirical work on how new technologies and software could be integrated into existing product lines. This analysis also considered the complexity of cross-border competition issues. This experience, in particular, gave me a deep appreciation for the importance of providing market participants with rapid determinations about whether an acquisition might be challenged, since long, drawn-out deliberations can impose significant costs.

At the same time, while I have deep experience in consumer protection enforcement, I have not been directly involved in antitrust law enforcement. I will draw on the expertise of the Bureaus of Competition and Economics, as well as these pro-

fessional experiences, including my formal training in finance, accounting, and applied economics, to contribute to the agency's mission.

Question 2. According to media reports, a former employee at the Consumer Financial Protection Bureau (CFPB) has alleged that the agency systematically identified and rejected Republican job applicants. Did you participate in any effort at CFPB to reject Republican or conservative-leaning job applicants? If so, please describe these efforts in detail.

Answer. Without qualification, I did not participate in or observe any efforts to reject applicants based on political beliefs.

Question 3. According to media reports, a former CFPB employee revealed that there were weekly hiring meetings at CFPB in which interviewers summarized the qualifications and attributes of applicants, and any attendee could voice an opinion before each candidate's verdict was rendered. Note-taking was strictly forbidden, and interviewers reportedly destroyed their records after the meetings.

Did you attend these weekly hiring meetings at CFPB? If so, did you ever summarize the backgrounds of any applicants for jobs at CFPB? Provide a list of applicants whose backgrounds you summarized for jobs at CFPB.

Did you ever voice an opinion about job applicants at CFPB? If so, provide a list of each applicant on which you opined.

Did you engage in destruction of records regarding applicants for jobs at CFPB during your tenure there? If so, please explain why you destroyed these records.

Answer. No, I did not attend these Office of Enforcement weekly hiring meetings, provide applicant summaries, voice opinions about job applicants directly or indirectly for these meetings, nor engage in any destruction of records.

I did serve as hiring manager over certain positions at the CFPB. Notably, none of these positions were filled using a non-competitive hiring authority. I chose to publicly post all vacancies for positions under my supervision and subject applications to third-party review to determine whether an applicant met the technical qualifications in order to be advanced for further consideration.

I was proud to hire and supervise veterans eligible for hiring preference, including those with a service-connected disability. Other than veterans' preference, which is explicitly authorized under Federal law, all candidates were evaluated on a competitive basis in accordance with OPM and agency policy, which forbids consideration of political affiliation in competitive hiring.

Question 4. A *Freedom of Information Act* investigation last year revealed that you coordinated a meeting between CFPB Director Richard Cordray and Eileen Mancera, a longtime Democratic fundraiser and lobbyist. Please explain the circumstances regarding your coordination of this meeting. Why were you engaging in apparent political activity in your capacity as a Federal employee?

Answer. I did not arrange a meeting between CFPB Director Richard Cordray and Eileen Mancera.

The senior leadership team at the CFPB regularly referred incoming inquiries from current and prospective market participants in the student loan industry to me.

While I engaged in hundreds of calls and meetings with prospective market participants in an effort to be responsive to the marketplace, I do recall that Director Cordray suggested I reach out to Ms. Mancera, who worked for an investment firm.

I further recall that she and I had a brief conversation about the private student loan market, an area where her firm was exploring activity. We had no further communication after this brief conversation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
ROHIT CHOPRA

Question 1. Many online companies are engaging in targeted advertising. Using consumer data, companies can target what they deem to be the most relevant ads to consumers. Should there be more transparency into how the algorithms behind targeted advertising work so that consumers can see how they are being targeted for certain messages?

Answer. Many consumers may be unaware that a wide variety of data is collected on them and combined for the purposes of marketing and advertising. I read with interest the Federal Trade Commission's 2016 report entitled "Big Data: A Tool for Inclusion or Exclusion?" The report outlines some of the public policy implications with respect to the use of algorithms.

As a general matter, transparency contributes to a properly-functioning marketplace. I look forward to consulting closely with the FTC's staff on this issue, which

requires careful attention, given its impact on consumer protection, privacy, and competition.

Question 2. Would third party audits of algorithms be a reasonable way to ensure the algorithms are doing what companies claim and not harming competition or consumer choice? Is this something the FTC might consider looking into?

Answer. Some companies that rely on algorithms and machine-learning do engage in third-party audits to determine whether they are in compliance with law and regulation. This is particularly true for companies that offer services related to the offering of credit, housing, and employment, given existing statutory protections against non-discrimination. However, this is certainly not the norm.

I look forward to engaging with policy experts at the FTC, industry stakeholders, and consumer and privacy advocates to better understand these issues and determine how the FTC might best add value to advance its consumer protection and competition mission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DAN SULLIVAN TO
ROHIT CHOPRA

Question 1. As a former Attorney General of Alaska, I always appreciated coordination with Federal agencies where appropriate, and the opportunity to communicate solutions that made the most sense for Alaskans. Given the importance of state attorneys general to the FTC's antitrust enforcement, please describe your views on the working relationship between the FTC and state attorneys general.

Answer. I am fortunate to have developed working relationships with a bipartisan group of state Attorneys General and their staffs. As I noted in the hearing, state Attorneys General are key partners to Federal law enforcement. I have direct experience in partnering with state Attorneys General on investigations and consumer education.

I have regularly addressed participants at conferences and meetings hosted by the National Association of Attorneys General. In 2016, I served as the keynote speaker for a conference hosted by the Conference of Western Attorneys General (CWAG), which includes among its members the Attorney General of Alaska.

State Attorneys General and other state officials are invaluable partners, and I hope to build on my existing relationships and work with these offices for the benefit of Alaskans and all Americans.

Question 2. As you know, the state I represent is unique which means its problems are unique and require unconventional solutions. In a highly rural state like Alaska, many communities are not connected by roads, challenging weather conditions prohibit timely delivery of mail and other essential services, and quality connectivity is considered a luxury. One of your objectives at the Commission is consumer protection and education. How will you ensure that rural constituents like mine have the tools they need to make informed decisions and in cases of abuse that require follow up, for example data breaches or identity theft, the information necessary to mitigate risks and resolve the issue?

Answer. In my previous service as a government official, I noted that traditional methods employed by Federal agencies to engage and educate consumers were often ineffective, particularly when quality connectivity was a barrier. I learned a great deal from visiting rural areas to understand how to best partner with state and local government to reach consumers in an efficient and effective manner. I am committed to soliciting feedback from elected officials, including Members of Congress, to gain insight on how to ensure that the FTC is reaching Americans in rural areas.

Question 3. In your prepared statement, you discuss anticompetitive consolidation, which immediately called to mind the enormous market capitalization of tech companies. Recent calculations value the four largest tech companies' capitalization at \$2.8 trillion, which is a staggering 24 percent of the S&P 500 Top 50, close to the value of every stock traded on the Nasdaq in 2001, and to give a different perspective, approximately the same amount as France's current GDP. Press reports have also noted allegations of increased anti-competitive behavior by some of these companies. Is there a point at which these companies are simply too big from an anti-trust standpoint?

Answer. While I appreciate this concern, existing law and regulation generally does not establish specific caps or size triggers with respect to market capitalization, assets, revenue, or profits.

However, as I noted in my responses to questions in the hearing, the technology sector competes with firms in a broad range of sectors, not just firms that are seen as technology firms. In addition, the technology sector has contributed an increasing

share of economic activity and growth in the U.S. economy. Therefore, it will be critical for the FTC to carefully analyze market dynamics in the technology sector to ensure that the law is being followed and that competition is robust.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DEAN HELLER TO
ROHIT CHOPRA

Question. When Congress passed the Fairness to Contact Lens Consumers Act in 2003, it was a pro-consumer measure that ensured consumers automatically receive a copy of his or her prescription after an eye exam—without having to ask for it, pay an additional fee, or sign a waiver. Do you agree that consumers should receive copies of their prescriptions as Congress intended so that they can use the prescription to purchase their contact lenses from a source of their choosing?

Answer. The Fairness to Contact Lens Consumers Act explicitly provides for patients to obtain a copy of a prescription from a prescriber whether or not the patient requests one. I agree that there are benefits to competition of the Act, and the FTC should carefully consider all points of view to ensure that the implementation of this law creates the benefits to the marketplace as Congress intended.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BILL NELSON TO
ROHIT CHOPRA

Question 1. The FTC is a relatively small agency that has to effectively use its resources to cover a very broad jurisdiction. In this regard, as a matter of discretion, it may be wise for the FTC to pursue enforcement cases involving practices that result in substantial harm. However, substantial harm is not a legal requirement under section five of the FTC Act—cases involving deception do not require harm at all, and cases involving unfairness can involve harm that is prospective and/or non-financial. Consequently, it is very important that commissioners do not stringently require types of harm as a legal test for agency enforcement actions. This principle is particularly important because Lab MD is challenging the FTC's legal authority to bring enforcement actions for data breaches based on the lack of requisite harm. As a commissioner, will you pledge to not require substantial harm or financial harm as legal tests for FTC enforcement actions?

Answer. Yes. The FTC should not create additional legal requirements unless based in statute, regulation, or legal precedent.

Question 2. The FTC's Bureau of Economics provides valuable insight and analysis that supplements the FTC's work. However, the FTC is, first and foremost, a law enforcement agency, not a regulatory agency. As such, economic analysis should play a complementary role, not a dispositive one. The FTC should enforce the FTC Act and the other laws under its jurisdiction according to legal doctrine, not economic analyses. As a commissioner, will you pledge to continue to further the FTC as a law enforcement agency in which the Bureau of Economics and economic analyses play a complimentary role, not a dispositive role? Will you pledge to enforce the law according to legal precedent?

Answer. Yes. As a practical matter, data and analysis, such as consumer complaint trends, help to inform agency enforcement priorities. However, the FTC not should create legal prerequisites to bringing an enforcement action unless based in statute, regulation, or legal precedent.

Question 3. Piracy continues to be a problem that plagues content providers. The Internet is filled with websites that provide pirated content and entertainment at the expense of the companies that produce the content. Moreover, many of these websites can harm consumers with unsafe or even fraudulent data and commercial practices. What can the FTC do to crack down on the illegal piracy of American entertainment and content?

Answer. While the FTC is generally not responsible for enforcing intellectual property law, I agree that websites offering pirated content might also deceive consumers into downloading malware. If confirmed, I look forward to reviewing the agency's work-to-date on this issue to determine the best course of action.

Question 4. Fraudulent websites can deceive consumers by masquerading as legitimate hotel websites. Consumers who are fooled by these sites reserve rooms that do not exist or turn out to be different from what they reserved online. According to industry statistics, this particular fraud affects millions of consumers a year and costs the hotel industry hundreds of millions of dollars. I wrote former FTC Chairwoman Edith Ramirez about this issue in June 2015. Will you pledge to ensure that

the FTC will work with other law enforcement entities (such as state attorneys general) to bring enforcement actions against fraudulent hotel websites?

Answer. Yes. Many Americans have limited time and resources to take their family on a vacation. For families who have saved for this experience over a long period of time, fraud can be particularly harmful. If confirmed, I look forward to working with other law enforcement agencies, including state attorneys general, to address this misconduct.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. RICHARD BLUMENTHAL TO
ROHIT CHOPRA

Question 1. What experience do you have working with State Attorneys General? What are your views regarding the Commission working with state law enforcement?

Answer. I am fortunate to have developed working relationships with a bipartisan group of state Attorneys General and their staffs. As I noted in the hearing, state Attorneys General are key partners to Federal law enforcement.

I have direct experience in partnering with state Attorneys General on investigations and consumer education. For example, my colleagues and I referred a matter regarding a deceptive website, GIBill.com, which was targeting veterans for their Federal education benefit dollars and masquerading as an official website of the Department of Veterans Affairs. A bipartisan group of 20 state Attorneys General reached an agreement with the operator of the website, fining the company and ordering the website to be turned over to the Federal Government.

I have also regularly addressed participants at conferences and meetings hosted by the National Association of Attorneys General, the Conference of Western Attorneys General, and the Center for State Enforcement of Antitrust and Consumer Protection Laws.

State Attorneys General and other state officials are invaluable partners, and I hope to build on my existing relationships and work with these offices to advance the FTC's mission.

Question 2. In the Dodd-Frank Act of 2010, Congress gave the FTC extensive authority over the sale, servicing, and leasing of automobiles—charging it to protect consumers from abusive auto lending practices and granting it exclusive authority to draft rules governing unfair or deceptive acts or practices by automobile dealers. Would you support the FTC using its rulemaking authority to rein in unfair or deceptive acts or practices by automobile dealers?

Answer. Section 1029 of the Dodd-Frank Act provided the FTC with rulemaking authority using procedures under the Administrative Procedure Act to address unfair or deceptive financing practices by automobile dealers.

Importantly, the section of this law also requires that the FTC coordinate with the Federal Reserve Board of Governors and the Consumer Financial Protection Bureau's Office of Service Member Affairs to address complaints and concerns from military families with respect to automobile dealers, with a particular focus on automobile dealers operating in close proximity to military installations.

If confirmed, I plan to closely review complaints, assess interagency coordination efforts, and engage stakeholders and work with my fellow Commissioners to determine the best path forward.

Question 3. More than 17 million Americans are the victims of identity theft every year. This problem seems to increase year over year as identity theft scams seem to get more sophisticated.

Three years ago, the FTC established *IdentityTheft.gov*. This site is supposed to be a one-stop shop for victims of identity theft where they can easily freeze credit across the big three credit reporting agencies, and recover their stolen identities.

This website's functionality is limited, however, because of what appears to be a lack of engagement by the credit bureaus to make the site what it should be.

How would you engage with credit bureaus to ensure *IdentityTheft.gov* has a comprehensive suite of easy to use tools allowing victims of identity theft to recover as quickly as possible, with as little stress as possible? What are your expectations with respect to the role the credit reporting agencies should play in making *IdentityTheft.gov* an effective one-stop shop for identity theft victims?

Answer. As data collection on consumers has grown to be more extensive and with more frequent occurrences of data breaches, identity theft can impose major costs and create frustration for consumers.

As a general matter, I believe the credit reporting industry needs to be deeply engaged in efforts to help consumers recover from identity theft as quickly as possible.

If confirmed, I will seek to better understand the industry's current level of engagement with respect to making *IdentityTheft.gov* a successful resource for the public.

Question 4. Would you support FTC's jurisdiction be expanded to include non-profits and charities so that it can act more swiftly to prevent and stop illegal conduct in the nonprofit sector?

Answer. Over the years, there has been bipartisan support from Federal Trade Commissioners to extend the FTC Act's jurisdiction to include nonprofit organizations under certain circumstances. In testimony prepared for Congress, the Commission has specifically noted that nonprofit organizations are major participants in health care markets, especially hospitals. While I have not closely studied this issue, the agency's consumer protection and competition mission may be furthered by ensuring a level playing field where all market participants are subject to the same set of rules.

If confirmed, I will study this issue more closely and consult with state Attorneys General (many of whom devote significant resources to overseeing nonprofits and charities) to offer a more detailed perspective to Congress on this issue, if requested.

Question 5. Other Federal agencies charged with consumer protection make an array of data available on consumer complaints received. The FTC releases relatively very little data on companies receiving significant levels of complaints. Do you think the FTC should be more transparent about the complaints it receives?

Answer. I am deeply committed to promoting transparency in government. Not only does transparency make agencies more accountable to Congress and the public, it reduces costs for prospective market entrants seeking to understand their competitive landscape.

If confirmed, I look forward to identifying opportunities to enhance transparency, including with respect to the FTC's Consumer Sentinel database of complaints, while respecting consumer privacy and other considerations.

Question 6. The Consumer Financial Protection Bureau was created in response to the 2008 financial crisis and Great Recession after it became clear that our financial sector needed far more oversight to prevent a disaster of that magnitude from happening ever again. The current Administration seems intent on gutting this agency that serves a critical role in protecting Americans from irresponsible financial institutions. Of course, the CFPB and the FTC complement each other in their protection of consumers. How do you envision the FTC's role in holding financial institutions accountable?

Answer. Financial institutions play a fundamental role in the economic security for American families. Given this outsized influence, monitoring risks and potential harms to consumers is critical for the FTC, the CFPB, and the prudential banking regulators, which each enforce consumer protection laws in the financial services sector.

If confirmed, I believe that the FTC must execute its responsibilities to enforce laws that Congress has delegated to the agency, putting a priority on where risks to consumers is greatest. The FTC must also prioritize enforcement where it has exclusive jurisdiction and closely coordinate with the CFPB and the prudential banking regulators where it shares jurisdiction.

Coordinating efforts across agencies is an iterative task. Whenever possible, this process should be informed by consumer complaints and other data, as well as resource allocation decisions by other agencies.

As a general matter, all of the agencies should deploy resources to areas where there may be risk or harm in the market. After making this assessment, an individual agency should assess whether it has unique authorities or expertise that would make it best suited to addressing a particular risk or harm in the market.

While the FTC, CFPB, and the prudential banking regulators all share responsibility for enforcing certain consumer protection laws, the FTC has exclusive jurisdiction and/or specialized expertise in certain areas. For example, the FTC has exclusive jurisdiction to enforce provisions of the Gramm-Leach-Bliley Act (GLBA) related to the security of customer information with respect to nonbank financial institutions, such as credit reporting agencies.

Similarly, the FTC is unique among these agencies to have jurisdiction to police nonbank small business lenders for unfair or deceptive acts or practices. With this in mind, the FTC can and should be held accountable by Congress and the public for ensuring adequate oversight over these markets, given this exclusive jurisdiction.

Congress provided enforcement authority to the CFPB for certain laws that had previously been exclusively enforced by the FTC at the Federal level. Importantly, while Congress did transfer certain enforcement authorities from other agencies to the CFPB, Congress did *not* transfer enforcement authority from the FTC for many

critical consumer protection laws, including the Fair Credit Reporting Act and the Fair Debt Collection Practices Act. This choice by Congress underscores the importance of continued FTC involvement and close interagency coordination.

The FTC and CFPB coordinate their respective efforts under a Memorandum of Understanding that has been revised over time. If confirmed, I look forward to continuing these coordination efforts to benefit consumers and the marketplace.

Question 7. Other consumer protection agencies appear to be reducing the vigor of their enforcement work. In what way should this impact the priorities of the FTC?

Answer. When allocating agency resources, I believe agency leadership should deploy resources to areas where risk to consumers is greatest, such as where there is a concentration of consumer complaints. Risk to consumers might be higher or lower depending on the priorities and resource allocation decisions of other Federal and state agencies. Inasmuch as other agencies are reducing consumer protection oversight, this can serve as one input for how the FTC develops its own priorities and allocates its resources to protect consumers.

Question 8. In the past, the FTC has cracked down on for-profit colleges and vocational programs with strong enforcement actions. However, we're seeing these institutions continue to defraud Americans. A study conducted by The Century Foundation found that 98 percent of complaints asking for student loan forgiveness alleging fraud by colleges were from students attending for-profit institutions. If confirmed, how will you protect Americans from being scammed by such institutions?

Answer. Students, their families, and honest colleges are all harmed when some institutions use unfair or deceptive practices in the higher education industry. Paying for college is one of the biggest expenses a family makes. The FTC can and should make a concerted effort to protect families from illegal practices in this sector.

Question 9. More than two of every three American households own a pet. The FTC has estimated they will spend \$10.2 billion on medications this year, of which more than \$5 billion require a prescription. It has been estimated that pet owners who can get a copy of their pet's prescription and shop around, could save 20 to 30 percent on branded medications and 50 percent when they purchase generics. This suggests that prescription portability can save pet owners billions of dollars every year—in addition to the savings in time and transportation if they can get those prescriptions filled while they are at the grocery store or pharmacy or delivered from an online pharmacy. Unlike with human medications, with our pets, the prescriber also dispenses the medication prescribed—setting up a conflict of interest whereby the prescriber is both a health care provider and a retailer.

In testimony in 2016, the FTC stated that “we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.” Do you agree with this conclusion?

Answer. While I do not have detailed knowledge of the pet medication market and industry structure, as a general matter, a healthy, competitive market is one where consumers can shop and compare product features and prices easily across sellers. If confirmed, I look forward to exploring this issue further, as well as opportunities to benefit consumers and competition in this market.

Question 10. The prescribing and dispensing of human medications has long been separated. With eyeglasses and contact lenses, where prescribers also sell the products they prescribe, Federal law grants consumers the right to their prescriptions. Why should it be any different for pet owners with regards to medications for their pets?

Answer. I do not have detailed knowledge of the pet medication market and industry structure, but you raise an important question about whether a consumer has the ability to easily obtain a prescription and shop for the best products and prices. I look forward to further exploring this issue and consulting with your office and other stakeholders, if confirmed.

Question 11. Manufacturers of pet medications can, and do offer inducements to veterinary clinics to prescribe and sell their medications. Do you think the public, and pet owners who spend billions of dollars annually on prescription pet medications have a right to know whether their vet clinic is receiving payments from the manufacturers of drugs that clinic prescribes?

Answer. As a general matter, transparency contributes to a properly-functioning marketplace, and I look forward to further exploring this issue and consulting with your office and other stakeholders, if confirmed.

Question 12. In 2003, Congress passed the Fairness to Contact Lens Consumers Act (“FCLCA”) to grant the 40 million Americans who wear contact lens wearers the right to copies of their prescriptions. The law also established a process for consumers to have their prescriptions verified when they purchase their lenses from a retailer other than the prescriber.

On September 3, 2015, the FTC launched its ten-year review of the Contact Lens Rule. The comment period closed on October 26, 2015, after the Commission received over 660 comments from a wide variety of stakeholders including optometrists, ophthalmologists, consumers, contact lens manufacturers and third-party contact lens sellers such as big box stores and online retailers.

On December 7, 2016, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) concluding that “compliance with the automatic prescription release provision could be substantially improved.” This is consistent with the comments of 20 State Attorneys General who reported to the Commission that: “[t]he States are aware, from their enforcement efforts and collective experience, that not all patients receive their prescription in writing as a matter of course.” The NPRM also proposed the common sense solutions of having consumers sign an acknowledgement that they have received their prescriptions and clarifying the right of consumers and their chosen retailers to receive additional copies of those prescriptions.

If confirmed, will you prioritize finalizing this proposed rule, to help ensure all consumers will receive copies of their prescriptions, as Congress intended? Considering FTC’s limited resources, and the significant resources that would be required to take action against individual prescribers who are not in compliance with this requirement under the current rule, do you agree that the FTC’s proposed rule is an efficient means of promoting compliance?

Answer. I appreciate concerns that the rulemaking process related to the contact lens market has been ongoing for an extended period of time. I also understand that the FTC will host a workshop to gather additional input next month. If confirmed, I am committed to closely reviewing the proposal and the public feedback to ensure that any changes to the rule are finalized in a timely manner.

Question 13. The FTC has not pursued any enforcement activity under the Military Lending Act, despite having the authority to enforce this important protection. If confirmed, would you support vigorous enforcement of the MLA?

Answer. Yes. It has been more than a decade since the Department of Defense’s Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents submitted to Congress. The report noted that “[p]redatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” The report specifically noted that the Department of Defense needed the assistance of Federal and state enforcement agencies.

If confirmed, I plan to closely examine the agency’s activities to promote compliance with the MLA.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
ROHIT CHOPRA

Question 1. The February 2013, the Federal Trade Commission published a report that found that five percent of consumers had errors on their credit reports that could result in less favorable terms for loans.

Based on that study, do you think the consumer reporting agencies (CRAs) comply with the Fair Credit Reporting Act (FCRA)’s requirement to “follow reasonable procedures to assure maximum possible accuracy” of credit reports? (15 USC 1681e(b))

Answer. Since credit reports are used by prospective creditors, employers, landlords, and others, errors can have a major impact on a family’s financial life. Ensuring high levels of accuracy is important for the entire marketplace.

The FCRA creates obligations for both furnishers and CRAs. Both of these parties have an impact on accuracy. Addressing accuracy and dispute resolution issues should be a priority in FCRA enforcement.

Question 2. Do you think the FTC should conduct a follow-up study to see if error rates have improved?

Answer. The FTC published a series of reports pursuant to the Fair and Accurate Credit Transactions Act of 2003. The final report in this series was issued in 2015.

While I do think error rates are worthy of further study, I would not want resources to be taken away from important FCRA enforcement work. This is certainly worth considering, and, if confirmed, I look forward to working with the FTC’s staff to ensure the agency is adequately addressing an issue that impacts millions of Americans.

Question 3. If error rates continue to impact millions of Americans, what actions should the FTC take to enforce compliance with the FCRA?

Answer. The FTC shares enforcement authority under the FCRA with the CFPB and the states. If confirmed, I expect the FTC to play a leading role in credit reporting issues to ensure that any illegal practices are addressed.

Question 4. Do you think the policies and practices of CRAs to handle consumer disputes are in compliance with the FCRA?

Answer. As I noted in the hearing, consumers are not able to vote with their feet in this market. This might contribute to concerns about the dispute resolution and investigation process. If confirmed, I look forward to working with the agency's staff to address the consumer dispute issues that continue to persist in the market and to take appropriate enforcement actions when the law is being violated.

Question 5. In 2015, the New York Attorney General reached a groundbreaking settlement with the three national consumer reporting agencies—Experian, Equifax, and TransUnion. The terms of the settlement require the CRAs to do more to ensure maximum possible accuracy of credit reports and to improve the dispute resolution process for consumers.

Do you think the terms of the settlement regarding dispute resolution represent best practices for CRAs' compliance with the FCRA's requirement that CRAs conduct a "reasonable reinvestigation" if the consumer disputes the accuracy of the information in his or her credit report? (15 USC 1681i)

Answer. This is a very important question. There have been longstanding concerns that CRAs and furnishers may not have adequate incentive to sufficiently investigate disputes.

The 2015 nationwide settlement with the New York Attorney General, as well as the subsequent settlement with 31 additional states, were certainly important developments in FCRA compliance and consumer disputes.

It may be too early to tell whether the settlement terms represent "best practices." If confirmed, I would be interested in working with FTC staff, the CFPB, and the states to see how these practices are being implemented and whether or not it is working.

Question 6. Can the FTC use its current authorities to hold CRAs to higher standards when it comes to handling consumer disputes?

Answer. This is a worthwhile issue to explore, and, if confirmed, I would like to look into this further.

Question 7. What are your views on the adequacy of the Fair Credit Reporting Act enforcement regime?

Answer. Given the pervasive impact of credit reporting issues on consumers and many sectors of the economy, FCRA compliance and enforcement is critical. The FTC has long been a leader in this work.

I support ongoing enforcement by the states, the CFPB, and the FTC. Importantly, FCRA applies not just to CRAs, but also to furnishers, so there is a great deal of oversight to conduct. As the FCRA approaches its 50th anniversary, I believe the FTC should work with Congress to provide any appropriate analysis or technical advice to identify opportunities to enhance compliance.

Question 8. What are your views on the inclusion of medical debt in credit reports?

Answer. My views on this topic have been shaped by empirical analysis and personal experience.

The 2014 study by the CFPB on medical debt and credit reporting revealed many interesting insights. Nearly half of all collections trade lines reported in consumer credit reports are related to medical debt. There were roughly 1,400 different debt collectors furnishing this information to the CRAs. The median unpaid amount was approximately \$200. Overwhelmingly, this negative credit reporting was due to unpaid bills for medical services, not unpaid bills for medical loans. The CFPB analysis also revealed that credit scoring models were overly punitive to consumers with medical debt in collections. In other words, having unpaid medical debt was not necessarily predictive of being a risky borrower for other types of credit.

I also have personal experience navigating complex health insurance and provider billing and reimbursement arrangements, leading to a seemingly-endless game of ping pong to resolve a medical bill. I was recently sent to collections due to a billing code issue that was not resolved by my provider and insurance company. Despite having considerable expertise in credit reporting and debt collection, I have spent many hours trying to guard against damage to my credit report. Many consumers might simply give up and pay a bill they do not legitimately owe.

This past September, the three nationwide credit reporting agencies announced that they would not include medical debt on consumer credit reports for 180 days

before showing it as past due. While I have not reached any firm conclusions about whether medical debt should be excluded altogether, I do believe this is an ongoing issue that policymakers must confront.

Question 9. Consumers have the right to inspect their credit reports every year. Do you think they should also have the right to inspect their credit score?

Answer. I am quite pleased that many of the Nation's largest credit card issuers have started to offer cardholders the ability to check their credit score for free on their websites. This makes sense, since the issuers are already collecting these scores on a regular basis for account monitoring purposes. Sharing this data with consumers has surely been valuable for many. At the same time, many consumers do not have credit cards or any credit products at all, but their credit scores impact their financial lives.

I think there is merit to ensuring that all consumers have the right to know their credit score without excessive cost. If confirmed, I would be open to exploring this issue further with FTC staff, interested stakeholders, and your office.

Question 10. Do you think the credit reporting market is functioning well? In your view, what areas could be improved?

Answer. There are many aspects of the market that need improvement, and many of the ongoing concerns stem from consumers' lack of market power. As I have previously noted, consumers are not the customer to credit reporting agencies. In addition, many creditors experience pain points with credit reporting issues, as errors and inaccuracy also impact them negatively. It is also very unclear as to whether credit reporting agencies have adequate incentives to safeguard sensitive consumer data. If confirmed, I look forward to continued dialogue on issues facing this important market.

Question 11. Do you think it is sound public policy for consumers to have to pay to freeze their credit report?

Answer. In a world of increasing cyber risks and data breaches, it is worth exploring whether it makes sense for consumers to pay to freeze their credit report, especially when their personal information has been exposed.

Question 12. Do you think it is confusing for consumers to understand the difference between freezes, which are defined by and regulated under state law, and the CRAs' various "lock" products, which fall outside of the protection of state law?

Answer. Yes.

Question 13. Should the FTC have the authority to ensure compliance with the Safeguards Rule?

Answer. The FTC currently has authority under the Gramm-Leach-Bliley Act to ensure compliance with the Safeguards Rule for nonbank financial institutions. I believe this should be maintained.

While the FTC has authority to ensure compliance, many observers have noted that the Act and the Safeguards Rule may not have robust consequences for non-compliance by nonbank financial institutions. If confirmed, I look forward to working closely with staff, stakeholders, and your office on this.

Question 14. Do you think the FTC has the right expertise and capacity to investigate and evaluate algorithms for unfair, deceptive, fraudulent consumer practices in the marketplace?

Answer. My understanding is that the FTC has in-house expertise on these issues, but I am not certain whether it has adequate resources to do so. If confirmed, I am happy to explore this issue further.

Question 15. Will you prioritize bringing in additional technical talent to strengthen FTC's mission in the digital domain?

Answer. Yes. I believe the FTC should recruit the best and brightest, and drawing experts with technical knowledge in the digital domain is critical. At the same time, I recognize that it can be challenging to attract these workers, but I think the FTC should make a concerted effort to do so.

Question 16. What are your views of the FTC's ability to ensure adequate oversight of online privacy? Please include your perspective on the FTC's expertise and the adequacy of the regulatory tools available to it. What specific actions would you propose the FTC undertake to improve online privacy?

Answer. The FTC does not enforce a comprehensive privacy law that cuts across all sectors. With respect to online privacy, the FTC's authority generally stems from Section 5 of the FTC Act, as well as discrete statutes such as COPPA. This is an important issue, and, if confirmed, I look forward to further exploring what can be done to improve online privacy.

Question 17. The FCC's Net Neutrality order is premised upon ISPs disclosing voluntary policies and the FTC enforcing compliance with those policies. Do you agree

that the FTC's authority only extends to enforcing a company's compliance with whatever policy the company issues? If not, please explain.

Answer. While I would need to consult further with FTC staff on this, it is worth noting the FTC has often asserted deception claims with respect to representations made to consumers. If a company discloses how it collects and uses personal data or prioritizes certain content, that might be material when seeking to determine whether there was a violation of law.

Question 18. If the Ninth Circuit's decision in *FTC v. AT&T Mobility* is allowed to stand, what authority, if any, will the FTC retain to enforce these company policies?

Answer. If the ruling from the *en banc* review concurs with the ruling of the initial panel, it may be difficult for the FTC to ensure there is a level playing field if common carriers and others are competing in the same market.

Question 19. What is your view of the propriety of the FTC imposing conditions on proposed mergers as compared with suing to block a deal? How would you evaluate when to use one or the other?

Answer. The choice to settle or sue is a challenging one for every Federal enforcement agency. At times, it may be in the public interest to conserve resources and avoid litigation through settlement. With respect to proposed mergers, agencies can sometimes mitigate anticompetitive concerns outside of litigation. Other matters may be more appropriate for litigation.

One significant advantage of litigation is that there tends to be greater transparency to the public about the facts and the issues at hand. It will be important for the FTC to have adequate resources to litigate when appropriate, while also seeking to be as transparent as possible when resolving a matter via settlement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
ROHIT CHOPRA

Question 1. What are your ideas how to promote consumer protection in an increasingly online—and connected—world?

Do you believe that the current FTC enforcement principles are sufficient to protect consumers? And do you believe the FTC has the resources necessary to protect consumers given the significant amount of work on the docket for the agency?

Answer. While the FTC has the authority to bring enforcement actions to protect consumers, I am not fully certain at this time that the FTC has adequate resources to address the wide range of consumer protection and competition issues that face consumers and the marketplace.

If confirmed, I will work with my fellow Commissioners and agency staff to closely assess the adequacy of agency resources.

Question 2. In December, I wrote to the FTC, along with Senators Schumer and Blumenthal, asking for a workshop to discuss the increased use of “bots” to purchase large quantities of in-demand toys and items, particularly at Christmas. The FTC has confirmed that it will engage with key stakeholders to determine if a workshop is necessary. Will you commit to reviewing the record on this issue and to working with my office to determine next steps, including the possibility of legislation?

Answer. “Bots” are an emerging area of concern for both consumers and sellers of goods and services. The FTC already has authority to address certain practices related to “bots” in the buying and selling of tickets to performances and events. This seems to be an area worthy of further review, and I look forward to working with your office on this, if confirmed.

Question 3. Last week, an article in *TechCrunch* showed how Facebook uses data from Onavo Protect, a subsidiary app, to gather data on its competitors; how Google uses its search rankings to demote alternate competitive sites; and Amazon's aggressive low pricing undercuts book publishers. Under your respective leadership, how will the FTC enforce the principles of unfair methods of competition against tech giants like Facebook, Google and Amazon to promote consumer welfare?

Answer. Every year, the technology sector has grown in scale and scope, competing with sectors across the economy. Without speaking to any specific company, investigation, or matter, as a general rule, I believe the FTC should use all of its law enforcement tools to ensure that incumbents are not violating antitrust laws and should vigorously pursue any violations.

Question 4. Following the FTC's approval of the Google/DoubleClick acquisition in 2007, then Commissioner Pamela Jones Harbor released a dissent detailing the need for the commission to “evaluate the implication of this kind of data merger

from a competition as well as a consumer protection perspective.” As commissioner, how would you use this framing of data mergers in evaluating mergers and acquisitions in the technology industry?

Answer. Big data has significant implications for the FTC consumer protection, privacy, and competition work. Data is now seen as a key asset for firms to gain a competitive advantage. When evaluating mergers, it will be important for the agency to carefully analyze the role of data assets in a particular transaction.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TAMMY DUCKWORTH TO
ROHIT CHOPRA

Question 1. At the Consumer Federation of America, military families are one of your main focuses. If confirmed, are you committed to prioritizing consumer protection enforcement where active-duty servicemembers, Veterans, survivors and their families have been targeted by bad actors and if so, can you list your top priorities with respect to military consumer protection?

Answer. In previous Congressional testimony, I have described military consumer protection issues as a “canary in the coal mine.” Of course, the military community warrants support from across Federal agencies, but fraud and misconduct targeted at the military is often a harbinger for risks to the broader civilian population.

As a general matter, I have observed that Federal agencies are quick to tout their commitment to the military, but slower to do the serious work and analysis to determine the specific needs across various military population segments. For example, members of the Reserves face different issues compared to, say, elderly veterans or surviving military spouses. I am confident the FTC can do the work necessary to understand the range of issues as they relate to these specific segments.

At this point, I can say that I am particularly concerned about a few specific areas: benefits-related fraud targeted at veterans, data collection and privacy issues in the active-duty community, and quality of outreach by Federal agencies to members of the National Guard.

Question 2. What additional relevant experience do you bring with respect to protecting military consumers?

Answer. While at the U.S. Department of Education and the Consumer Financial Protection Bureau, I was fortunate to work extensively on military consumer protection issues.

In 2012, I co-authored a report with Mrs. Holly Petraeus that uncovered an overcharging scheme targeted at military families with student loans. The report led to substantial changes in industry practice. After a referral to and coordination with the Justice Department, violators of the Servicemembers Civil Relief Act were fined \$60 million and refunds were provided to 78,000 servicemembers.

I was also closely involved in working with state Attorneys General to shut down GIBill.com, a deceptive website targeting veterans. The bipartisan group of 20 state AGs fined the operator of the website, and ownership of the website was turned over to the Department of Veterans Affairs as part of a settlement.

While at the CFPB, my office also led the development of many consumer tools for military consumers, including student loan repayment calculators and guides for servicemembers seeking to pay for college.

I was also fortunate to be invited by the Department of Defense to offer seminars at many large military installations and to present at the DOD’s Worldwide Education Symposium. These events provided opportunities for consumer education and to hear about issues faced by active-duty servicemembers. I have also lectured at the Judge Advocate General Legal Center & School and worked closely with many JAGs who assist servicemembers on debt collection, auto lending, and many other consumer issues.

Question 3. A few months ago, when writing about what military families should do in the wake of the Equifax data breach, you estimated that military consumers report identity theft at double the rate of the civilian population. Why do you think this is, and what is your assessment of the FTC’s work-to-date to protect military consumers?

Answer. While the FTC does not release granular data on the military community’s complaints about identity theft, there are many potential explanations. One potential explanation is that many active-duty servicemembers face frequent Permanent Change of Station (PCS) orders. These frequent moves can prevent a military family from spotting early warning signs, such as suspicious credit alerts or account openings.

Some servicemembers and their families have shared that they are often separated from their immediate and extended families for long periods of time, making

digital communication a critical way to stay in touch. However, some are concerned that they might be inadvertently exposing sensitive information about themselves, potentially contributing to identity theft.

Like all agencies, I think the FTC can always do better to serve military consumers. If confirmed, I hope to work with my fellow Commissioners and the staff to advance this work.

Question 4. When Congress passed the Fairness to Contact Lens Consumers Act in 2004 it helped reduce barriers to retail competition in the contact lens market and led to lower prices for consumers. However, contact retailers sometimes sell patients contact lenses after the prescription has expired or fail to adequately verify the prescription in accordance to FCLCA. In some cases, this has led to dangerous eye and health conditions for the patient. How can the FTC work in coordination with the FDA, CDC and other Federal agencies to make sure contact lens patients are receiving high quality care and safe contact lenses?

Answer. To ensure that the FCLCA is meeting its intended goals, the FTC should consult with stakeholders and other agencies to gain feedback where appropriate.

Question 5. In December 2016, the FTC issued a proposed change to the current Contact Lens Rule that mandated that all eye doctors obtain a signed acknowledgment form from each of their contact lens patients when they receive a copy of their prescription. Do you know of any other ways for patients to understand their right to their contact lens prescription that would be just as, if not, more effective than a written acknowledgement?

Answer. I understand that the FTC will host a workshop to gather additional input next month. If confirmed, I am committed to closely reviewing the proposal and the public feedback to ensure that any changes to the rule are finalized in a timely manner and that patients understand their rights in the most effective and efficient way possible.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
TO ROHIT CHOPRA

Question 1. Restoring Internet Freedom FCC–FTC MOU

Within the net neutrality MOU, signed between the FCC and FTC, regarding the FTC’s authority it states: “*Congress has directed the FTC to, among other things, prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.*”

Therefore, can you say without reservation that you’ll have what you will need, upon being confirmed at the FTC, to actually catch improper actions taken by Internet service providers toward consumers?

Answer. At this time, I cannot say without reservation that the FTC has the resources and expertise to prevent unfair methods of competition and unfair or deceptive acts or practices with respect to Internet service providers. If confirmed, I hope to better determine whether the FTC is able to meet this task.

Question 2. Court Case on FTC Authority over “Common Carriers”

Unfortunately we still don’t know the full FTC authority over common carriers, like in the case pending on AT&T, so I would like to hear what you anticipate will be FTC’s authority going forward.

Answer. As you note, the U.S. Court of Appeals for the Ninth Circuit will review *en banc* the three-judge panel’s ruling in a pending case in which the FTC is a party. If the Court upholds the ruling of the panel, this will present significant challenges in creating a level playing field in the broadband Internet market.

Question 3. Court Case on FTC Authority over “Common Carriers”

How you can ensure the FTC will even have the authority to enforce the limited principles covered in Chairman Pai’s weak form of net neutrality?

Answer. Rules and orders under the Communications Act are generally not enforced by the Federal Trade Commission, so I can not be certain how this will play out in practice.

Question 4. Court Case on FTC Authority over “Common Carriers”

And I would ask if you can provide me a true commitment to act on behalf of consumers who are impacted by less than fair practices by some in the telecommunications industry.

Answer. Regardless of what Congress and the Courts decide with respect to net neutrality, I am committed to using any appropriate authorities available to the FTC to protect consumers.

Question 5. Broad Positions on FTC's Place on Net Neutrality

Can you please define for me what the lead telecommunications policy expert Federal agency is, in your opinion?

Answer. The Federal Communications Commission is seen by both the industry and policymakers around the world as America's primary telecommunications expert agency.

Question 6. Broad Positions on FTC's Place on Net Neutrality

Have you specifically recently read the MOU on net neutrality between the FCC and FTC, and do you support it in its entirety?

Answer. Yes, I have read the December 2017 MOU. Without having access to certain nonpublic information on ongoing investigations and consumer complaints, it is difficult to determine whether the provisions in the MOU are sufficient.

Question 7. Broad Positions on FTC's Place on Net Neutrality

What is your understanding of the capacity of the staff currently at the FTC, and do you think you can effectively execute this agreement enough to garner true public trust in ensuring a truly free and open internet?

Answer. My understanding is that the FTC may not have a large bench of technical experts on telecommunications. If confirmed, assessing the agency's capabilities so it can execute its enforcement responsibilities will be a priority.

Question 8. Broadband Internet Speed Honesty

I am aware that various state Attorneys General are concerned that a telecomm industry petition to the FCC on cost transparency, related to the advertisement of Internet speeds, quote "represents nothing more than the industry's effort to shield itself from state law enforcement."

Given the FTC's mission regarding deceptive practices, can you speak to your perspective on whether this is fair consumer protection issue to be concerned about at FTC, given the prices and promises ISPs make to generate more business?

Answer. While I am not deeply familiar with this petition, the FTC does have expertise on marketing and advertising practices that may be valuable resources in this discussion.

Question 9. Deceptive Advertising

When someone takes out a loan, or goes to buy a car or a reverse mortgage, they should be treated fairly. Unfortunately, that does not always happen. Some people have a profit model that is based on overcharging people. The FTC investigates and fines firms that engage in deceptive advertising. In previous years, the FTC has fined firms that misled people into taking out high-cost auto loans, overpaying debt collection agencies or taking out reverse mortgages. The FTC also took action against colleges like DeVry University that misled students on the likelihood of employment within six months of graduation.

How do you see the FTC continuing to work with the Consumer Financial Protection Bureau to take action against companies that intentionally mislead auto buyers, students and elderly homeowners?

Answer. The Consumer Financial Protection Bureau has deep technical expertise in mortgage, auto, and student lending markets among its policy experts, economists, and attorneys. The FTC should continue to work closely with the CFPB on law enforcement, consumer education, and in other areas of shared interest.

Question 10. FTC Investigation on GPS tracking of Vehicles

Last year it was revealed that the Federal Trade Commission is investigating GPS tracking technologies used in the subprime auto loan industry, but my understanding is that no findings or rulings have been released. Going back as far 2014, the New York Times had highlighted this as a concern. In their piece, they highlighted a troubling story of a mother in Las Vegas, Mary Bolender, who needed to get her child with a 103.5-degree fever to the ER, but her 2005 Chrysler van wouldn't start. As the piece says—"The cause was not a mechanical problem—it was her lender."

Now I have a number of concerns with their as a business practice, but can I get a commitment from you to continue to look into this issue and publically provide information on your findings and enforcement determinations in a timely manner?

Answer. Subprime auto lenders frequently make use of GPS trackers and kill switches, which has reduced the cost of repossession and may be meaningfully impacting the auto lending market. I am committed to transparently communicating any findings and determinations, to the extent permissible by law.

Question 11. Auto Loans

There have long been problems with deceptive advertising in auto sales. Two years ago, the FTC took action against two Las Vegas auto dealers, Planet Nissan

and Planet Hyundai, which ran ads touting sales, lease or financing options that seemed attractive but were cancelled out by fine-print disclaimers.

I know when you were with the Consumer Financial Protection Bureau, there were also problems with some lenders charging higher interest rates to Latinos and African Americans than whites, even when they had the same income and credit score.

What role do you think the FTC should play to make sure that auto buyers are not the victims of deceptive advertising or overcharged because of their ethnicity?

Answer. Protecting auto buyers and auto loan borrowers from discrimination is somewhat complex. The CFPB has rulemaking authority under the Equal Credit Opportunity Act (ECOA) as codified by Regulation B. However, with respect to auto dealers, I believe the authority to amend Regulation B lies with the Federal Reserve Board of Governors.

The FTC shares enforcement jurisdiction with the CFPB under ECOA with respect to nonbanks, except that the CFPB does not have enforcement jurisdiction under ECOA for auto dealers.

Separately, the FTC has the authority to prescribe rules regarding unfair or deceptive acts or practices with respect to auto dealer financing.

If confirmed, I am committed to consulting with staff to better understand the FTC's existing work to protecting consumers from discrimination in this market.

Question 12. Reverse Mortgages

Reverse mortgages are products sold to seniors to help them "age-in-place" and use their home equity as a means by which to responsibly pay their bills. Reverse mortgages can be sensible products, but sometimes have been falsely advertised to seniors. The FTC and the Consumer Financial Protection Bureau conducted a "sweep" of reverse mortgage advertisements, and a review of consumer complaints, and found that three reverse mortgage companies engaged in deceptive advertising which misled consumers.

Given the overlapping jurisdictions between the Consumer Financial Protection Bureau and the FTC, can you discuss how you envision the two entities work together to combat financial fraud, specifically scams impacting seniors?

Answer. Given the increasing population of senior citizens in America, reverse mortgage fraud will likely continue to be an ongoing concern. Congress required the Consumer Financial Protection Bureau to prepare a report on Reverse Mortgages that detailed many consumer protection issues associated with this product.

Pursuant to the Elder Abuse Prevention and Prosecution Act, the FTC has designated an Elder Justice Coordinator responsible for coordinating and supporting the enforcement and consumer education efforts and policy activities of the FTC on elder justice issues. Similarly, Congress also established an Office for the Financial Protection of Older Americans within the CFPB, which engages in consumer education and market analysis on issues facing older Americans. If confirmed, I look forward to facilitating continued coordination between the FTC and the CFPB on enforcement, consumer education, and other efforts.

Question 13. Merger Review Commitment

With increased multi-industry players growing in prominence by acquiring more businesses outside their core business model, can you commit to reviewing the horizontal merger guidelines, which have not directly addressed vertical mergers since 1984?

Answer. I believe that agencies should review official guidance and interpretations on a regular basis. Whenever possible, this should include public input. If confirmed, I will work with my fellow Commissioners and the agency's staff to explore this idea.