

**Opening Statement of the Honorable Lee Terry**  
**Subcommittee on Commerce, Manufacturing, and Trade**  
**Hearing on “The FTC at 100: Where Do We Go From Here?”**  
**December 3, 2013**

*(As Prepared for Delivery)*

Good morning and welcome to today’s hearing, which is aptly titled “The FTC at 100: Where do we go from here?”

And that’s a good question. Over the past century, the commission has seen its authority grow and the industries it regulates change dramatically. So on the eve of this 100-year milestone, I want to first to take a glimpse into the past and better understand what has prompted certain actions by the commission.

Understanding where we’ve been will provide the roadmap for where we go. This will be helpful for Congress, and this committee in particular, to know what we can do to ensure that the FTC stays focused on its statutory mission while also maintaining the necessary nimbleness needed to protect consumers and ensure competitive markets at a time when business practices are evolving at a remarkable pace.

We all have a stake in the FTC’s current mission to promote consumer welfare by ensuring that business practices in the United States are fair and transparent—while also addressing any market collusion or anti-competitive activity that could unfairly fix prices at a higher level than the market would otherwise demand. To achieve these goals, the FTC has a wide mix of instruments at its disposal, such as administrative adjudication, law enforcement, and rulemaking authority.

However, like all entities in the government, prioritization of goals is critical. Not only are the FTC’s resources finite, but also the sheer breadth of the FTC’s jurisdiction makes it necessary.

To that end, I am concerned with various issues at the FTC—some recent and others longstanding—that not only may take the commission away from the scope in which Congress legislated, but also add to the regulatory uncertainty many businesses already feel.

One clear example is the commission’s use of its Section 5 authority under the FTC Act, which allows the commission to address “unfair and deceptive trade practices.” I understand that the authorities under this section represent an important enforcement tool for the agency—especially in tackling entities like patent trolls. However, absent a coherent statement of policy on how the commission plans to enforce Section 5, many businesses—large and small—are left to examine past decisions to see how they may fit into the specific facts of that case.

–I think one area under Section 5 that warrants review is how the commission uses its authority to address the use and security of data. Commercial entities are finding new ways of using data in valuable ways that can help bring new products to consumers. For example, Google may sell some of our information, but we get free, cloud-based e-mail service in return.

The FTC’s job is to police the actions of companies like Google in its use of personal information. Essentially, this means enforcing Section 5’s requirement that companies don’t make any misrepresentations to consumers about what the companies do with personal information. But we wouldn’t be doing our job in Congress if we didn’t examine whether this arrangement continues to work for the benefit of consumers and businesses alike.

The exchange and monetization of data is valuable. According to a recent study by Harvard and Columbia, the data-driven marketing sector created about \$156 billion in revenue and contributed to about 675,000 jobs. But the exchange of our data should only be done with our consent, and that consent should be a meaningful choice. We should examine whether the consent decree paradigm is the

right answer for both consumers and for companies trying to comply with FTC policies; and if so, whether it can be improved upon.

Another example is the recently established Consumer Financial Protection Bureau. At first blush, it seems as though many of the actions being undertaken by this agency were formerly under the purview of the FTC. I have been vocal with my distrust for the CFPB. My concerns with this obscure agency are further compounded by the possibility that they may be duplicating efforts of the FTC. This is something I hope will be addressed in your testimony today or fleshed out by some questions.

Lastly, I would like to thank all of you. I have had the opportunity to meet personally with most of you, and hope to continue building a positive relationship, particularly because this is hopefully the first of many hearings on the FTC that our subcommittee will hold in the next few months, as we continue looking at the agency and potential legislation to modernize the FTC.

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