Agenda Item 3e. Consumer protection in electronic commerce

Contribution by
Federal Trade Commission
United States
The United Nations Conference on Trade and Development (“UNCTAD”)

Ecommerce Questionnaire

Informal Staff Response from the Federal Trade Commission of the United States

(April 2017)

Introduction

Staff of the Federal Trade Commission (“FTC”) is pleased to provide this informal staff response to the Ecommerce Questionnaire issued by UNCTAD.1 We note that the FTC actively participated in the 2015 revision of the United Nations Guidelines for Consumer Protection (“UN Guidelines”) as well as the 1999 adoption and 2016 revision of the Organization for Economic Cooperation and Development (“OECD”) Guidelines for Consumer Protection in the Context of Electronic Commerce (“OECD Guidelines”).2 This work informs our responses to the UNCTAD Ecommerce Questionnaire and provides context for the FTC’s responses on consumer protection and ecommerce in the United States.

(1) What are the most common consumer protection issues and challenges your institution faces in ecommerce?

The most common issues and challenges facing the FTC with respect to ecommerce include fraud and deception, the impact of technological innovation on new and emerging

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1 This Informal Staff Response to the UNCTAD Ecommerce Questionnaire represents the views of FTC Staff and does not necessarily reflect the views of the Commission or any individual Commissioner.

business models and consumer decision-making, and the development of investigative tools and techniques for consumer protection issues involving ecommerce.

The FTC enforces numerous federal laws governing consumer protection, including Section 5 of the FTC Act, which provides the FTC with broad authority to challenge a wide range of “unfair and deceptive acts or practices in commerce.” Because of the flexible nature of this authority, the FTC frequently has found itself on the forefront of consumer issues arising from ecommerce and emerging technologies. The FTC also enforces numerous laws and trade regulation rules that relate specifically to ecommerce such as the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), the Restore Online Shoppers’ Confidence Act, The Children’s Online Privacy Protection Act, the FTC Mail, Internet, or Telephone Rule, and the Pre-Sale Availability Rule, among others.³ It routinely applies these laws and regulations to electronic commerce consistent with the principle in the OECD Guidelines that “[c]onsumers who participate in electronic commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.”⁴

Another pervasive challenge with ecommerce is the issue of cross-border enforcement cooperation. In line with OECD recommendations on cross-border fraud cooperation,⁵ in 2006 the U.S. Congress passed the SAFE WEB Act of 2006, which provides the FTC with stronger tools to engage in better enforcement cooperation on consumer protection matters—including

³ For a list of the statutes the FTC administers or enforces, see Statutes Enforced or Administered by the Commission, FED. TRADE COMM’N, http://www.ftc.gov/enforcement/statutes (last visited April 6, 2017). For a list of the trade regulation rules the FTC administers or enforces, See Rules, FED. TRADE COMM’N, http://www.ftc.gov/enforcement/rules (last visited April 6, 2017).
⁴ OECD Guidelines at Part II, Art. I.
ecommerce—with foreign law enforcement authorities. The SAFE WEB Act has been instrumental in allowing the FTC to cooperate with law enforcement authorities in other countries on matters relating to ecommerce such as spam, scareware, data security, and cross-border fraud. In particular, the SAFE WEB Act authorizes the FTC to gather and share information (including confidential information) with foreign law enforcement authorities, and confirms the FTC’s authority to take action in appropriate cross-border cases, including the authority to provide restitution to U.S. and foreign consumers injured by cross-border consumer protection law violations, in appropriate cases. This type of enabling legislation is crucial for all jurisdictions to be able to effectively collaborate across borders with other authorities.

What do you think are the main building blocks to foster consumer confidence in ecommerce?

The FTC, like other consumer protection authorities, is confronted with the challenges of keeping pace with complex and dynamic markets. To do so, the FTC uses a wide range of tools and strategies to foster consumer confidence in ecommerce and in the consumer marketplace generally. These include:

- flexible legislation and regulations, such as Section 5 of the FTC Act, which allows the agency to use its authority to address new issues as they arise in ecommerce.

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• robust enforcement through investigations and cases as well as cooperation with other enforcers such as telecommunications and financial authorities.

• practical, easy-to-understand business guidance, consumer education and outreach on ecommerce issues.

• strategic policy work on innovative technology and ecommerce issues, including public workshops on ecommerce issues and stakeholder engagement with governments, businesses, consumer representatives. A list of FTC workshops on ecommerce and related issues is set forth in Appendix A.

• human and other resources, such as hiring technologists and attorneys with technical backgrounds and creating research hubs, such as the FTC’s Office of Technology Research and Investigations (OTech), which keeps abreast of technological developments that may affect consumers and assists with tech-related investigations, reports, and public workshops

• legislation and guidelines that facilitate cross-border cooperation. Again, the SAFE WEB Act has been instrumental in building confidence in ecommerce by confronting various jurisdictional challenges. Also, as a matter of course the FTC takes into consideration the cross-border ramifications of guidelines it issues relating to ecommerce.
(2) **Please provide a consumer protection cases in ecommerce where you successfully dealt with a problem and explain how it was resolved.**

As previously noted, fraud and deception are among the most serious ecommerce challenges. Combatting fraud is a critical component of the FTC’s consumer protection mission. With the explosion of technological developments, the online space is ripe for fraud against everyone, but especially vulnerable populations such as older citizens.

Technical support scams are a particularly prevalent online threat. A typical technical support scam begins with either a telephone call, internet ad or pop-up on the computer monitor indicating a problem with the computer. The scammer then proceeds to deceive consumers into purchasing unnecessary, or even harmful programs to “fix” non-existent problems. This trend appears to have a disproportionate impact on older consumers.8

The FTC has filed numerous cases against defendants engaged in these deceptive practices. In one case that settled, the FTC sued telemarketers in India who falsely claimed to be affiliated with major computer or Internet security companies. The FTC alleged that the telemarketers told consumers that their computers were riddled with viruses and malware and then offered to “fix” problems that did not exist, for several hundred dollars. The defendants agreed to relinquish most of their assets.9 The FTC charged the defendants with violating the FTC Act and Telemarketing Sales Rule with their misrepresentations and calls to numbers on the Do Not Call Registry.

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8The FTC’s Consumer Sentinel complaint data and law enforcement experience suggest that tech support schemes disproportionately affect older Americans. In 2015 Seventy-six percent of complainants who reported their age in the Consumer Sentinel database are over the age of 50, and fifty-six percent are over the age of 60.

In recent years, the FTC has seen tech support scams employ a new twist on this model by inducing consumers to call the scammers. For example, last June the FTC obtained a court order temporarily shutting down an operation that allegedly used internet ads to flash alerts on consumers’ computer displays.\(^{10}\) According to the FTC’s complaint, the phony alerts mimicked legitimate messages from Apple or Microsoft, misleading consumers, many of whom were senior citizens, into believing their computers had serious problems and directing them to call a toll-free number.\(^{10}\) Once on the phone, the operation’s telemarketers allegedly claimed to “diagnose” the computer, inevitably claiming to find grave problems requiring immediate repair by a technician. The scammers then allegedly charged consumers hundreds of dollars for repairs they likely did not need. Technical support scams like this one have caused consumers hundreds of millions of dollars in injury. The FTC continues to target such scammers, consulting with state and federal partners as well as researchers and computer software and manufacturing industry members, and has additional investigations underway.

Other FTC work emphasizes unauthorized electronic and other transactions. In January 2017, the FTC reached a settlement agreement with The Western Union Company (Western Union), a global money services business. Western Union agreed to forfeit $586 million and enter into settlement agreements with the Federal Trade Commission, the Justice Department, and the U.S. Attorneys’ Offices of four districts. According to the FTC Complaint, “for many years, Western Union’s money transfer system has been used by fraudsters around the world to obtain money from their victims.” In its agreement with the Justice Department, Western Union

admits to criminal violations including willfully failing to maintain an effective anti-money laundering program and aiding and abetting wire fraud. Among the various allegations against the company were that it facilitated bogus online purchases, totaling at least $187 million in losses. In addition to violations of the Telemarketing Sales Rule, the FTC alleges that Western Union’s failure to take timely, appropriate, and effective action in the face of fraud-induced money transfers was an unfair trade practice. In addition to the required payment of $586 million, the settlement requires Western Union to implement a comprehensive A-to-Z anti-fraud program, complete with meaningful training and monitoring to protect consumers in the future. The order also prohibits the company from transmitting a money transfer it knows – or reasonably should know – is fraud-induced. In addition, Western Union will have to block money transfers to anyone who is the subject of a fraud report, provide clear and conspicuous warnings to consumers, make it easier for consumers to report fraud, and refund a fraudulently-induced money transfer if the company failed to comply with its anti-fraud procedures.

(3) What is your experience in dealing with the emerging issues such as electronic payments, mobile banking services; digital content products etc.?

The FTC has devoted substantial resources to learning about emerging issues in ecommerce for more than a decade. For example, the agency has held workshops on issues like mobile payments and mobile privacy disclosures, issued reports and surveys, and, of course, brought law enforcement actions. For a comprehensive list of the agency’s work in this area, see http://www.ftc.gov/news-events/media-resources/mobile-technology. The FTC has published

guidelines on privacy disclosures in the context of mobile devices and provides annual privacy and data security updates.\textsuperscript{12} As previously noted, the agency also formed OTech to ensure that the FTC has the resources and expertise to support its work on technology issues, including those related to mobile issues.

The FTC has brought numerous enforcement actions in the context of mobile devices and apps. For example, in 2014 the FTC charged mobile phone service provider T-Mobile USA, Inc. with making hundreds of millions of dollars by placing charges on mobile phone bills for purported “premium” SMS subscriptions that, in many cases, consumers had never authorized.\textsuperscript{13} Similarly, in 2013, the FTC took legal action to shut down an operation that allegedly took in millions of dollars from placing unauthorized charges on consumers’ mobile phone bills, a practice known as “cramming”.\textsuperscript{14}

The FTC has provided updated guidance for parents and children in the context of electronic commerce. The FTC’s “OnGuardOnline.gov” consumer education campaign helps people guard against Internet fraud, secure their computers, and protect their privacy.\textsuperscript{15} As part of this campaign, the FTC in 2009 published and delivered a booklet, “Net Cetera: Chatting with Kids About Being Online,” to schools, police and sheriffs’ departments, and parent-teacher associations nationwide.\textsuperscript{16} The booklet explains to parents and their children how to deal with

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issues such as social networking, cyberbullying, using mobile phones safely, and protecting the family computer from malware. In 2014, the FTC issued an updated version of the popular free consumer guide “NetCetera,” which contains information for parents and other adults to use when talking with kids about how to be safe, secure, and responsible online. The FTC has also launched an advertising literacy campaign to help older children understand the ads they see and become smarter consumers. The campaign is targeted to “tweens” aged 8 to 12, and includes a game-based website at Admongo.gov, a curriculum tied to national standards of learning in language arts and social studies that teachers can use to educate students about advertising, a library of fictional ads that can be used as teaching tools, and activities for parents and kids to do together. All these materials are free and in the public domain.

The FTC has also advocated that mobile developers adhere to several important privacy guidelines, embodied in the agency’s 2012 report titled “Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers” (“FTC Privacy Report”). That report sets out a three-pronged framework for protecting consumer privacy. In the Privacy Report, the FTC specifically called on companies providing mobile services to work toward improved privacy protections by: development of short, meaningful disclosures; making their data practices more transparent; and developing standards that address data collection,
transfer, use, and disposal, of location data. These principles and implementation approaches are in line with those of the OECD Privacy Guidelines.20

**FINTECH**

The FTC is committed to protecting consumers in the fast-moving realm of financial technology, also known as FinTech.21 Consumers today have even greater options to store, share, and spend money with the aid of new technologies entering the marketplace at breakneck speed. These emerging financial technologies can empower consumers by providing greater financial choices and unprecedented convenience. At the same time, market participants offering these exciting new products must keep in mind important consumer protection principles as they continue to innovate.

The FTC continues to focus on how consumers are putting FinTech tools to use. These new uses range from mobile payments to virtual currencies to crowdfunding (the process by which companies and individuals raise money from the public to fund new projects and peer-to-peer payment systems), to online services with artificial intelligence. Many of these functions are in the form of mobile apps that allow consumers to share money electronically. The FTC conducted three Fintech seminars: a June 2016 seminar on Marketplace Lending, typically nonbank financial platforms that leverage technology to reach potential borrowers evaluate creditworthiness, and facilitate loans, an October 2016 seminar in Crowdfunding and Peer-to-

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Peer Lending, and a March 2017 seminar on Artificial Intelligence and Blockchain Technology. ²²

In addition, the FTC brings law enforcement actions against companies whose deceptive or unfair actions with FinTech harm customers. With the advent of this growing digital currency technology there has been a considerable spike in complaints to the FTC. For example, the FTC won a court order that shut down a bitcoin mining company, Butterfly Labs, in September 2014. ²³ Butterfly Labs and two of its operators agreed to settle FTC charges that they deceived thousands of consumers about the availability, profitability, and newness of machines designed to mine the virtual currency known as Bitcoin, and that they unfairly kept consumers’ up-front payments despite failing to deliver the machines as promised.


Appendix A

Selected FTC Workshops and Roundtables Relating to Ecommerce


- **Privacy Con**, January 14, 2016, [https://www.ftc.gov/news-events/events-calendar/2016/01/privacycon](https://www.ftc.gov/news-events/events-calendar/2016/01/privacycon)


• **Big Data: A Tool for Inclusion or Exclusion?** September 15, 2014,  


• **Internet of Things - Privacy and Security in a Connected World**, November 19, 2013,  

• **Mobile Security: Potential Threats and Solutions**, June 4, 2013,  

• **Mobile Cramming: An FTC Roundtable**, May 8, 2013,  
  [http://www.ftc.gov/news-events/events-calendar/2013/05/mobile-cramming-ftc-roundtable](http://www.ftc.gov/news-events/events-calendar/2013/05/mobile-cramming-ftc-roundtable)

• **Life of a Debt: Data Integrity in Debt Collection**, June 6, 2013,  

• **Enforceable Codes of Conduct: Protecting Consumers Across Borders**, November 29, 2012, (using enforceable industry codes of conduct to protect consumers in cross-border commerce),  

• **In Short: Advertising & Privacy Disclosures in a Digital World**, May 30, 2012,  


• Online Profiling Public Workshop, November 8, 1999, (regarding the aggregating of information about consumers’ preferences and interests, gathered primarily by tracking their movements online, and using the resulting consumer profiles to create targeted advertising on Web sites), [http://www.ftc.gov/news-events/events-calendar/1999/11/online-profiling-public-workshop](http://www.ftc.gov/news-events/events-calendar/1999/11/online-profiling-public-workshop)
