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**Closing Plenary
Taking on Big Tech:
Using All the Tools in the Consumer Protection Toolbox
Keynote Remarks of U.S. FTC**

Contribution

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Taking on Big Tech: Using All the Tools in the Consumer Protection Toolbox

Keynote Remarks of U.S. FTC Commissioner Rebecca Kelly Slaughter

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Good afternoon! I am so pleased to be here in Geneva with you at the United Nations Conference on Trade and Development’s annual meeting of the Intergovernmental Group of Experts on Consumer Protection Law and Policy. My name is Rebecca Kelly Slaughter, and I serve as a Commissioner of the Federal Trade Commission, or FTC, the United States federal consumer protection agency. Over the course of my five years at the FTC, I have been privileged to work alongside and learn from the Commission’s brilliant staff, whose principled service to the public is a daily inspiration. I know that the United States is not alone in experiencing a period in which public servants are not only underappreciated and undercompensated but also far too often vilified and pilloried—online and in real life. So, before I dive into more specific thoughts about consumer protection, let me say to all of you in this room and to all of your colleagues back home: Thank you, thank you, thank you. Your tireless work to protect consumers and level the playing field for honest businesses is making a difference in your communities, even if it isn’t front-page news. [Please give yourselves a round of applause!]

I bring warm greetings from the United States of America, whose people are celebrating our nation’s birthday: The Fourth of July. Two hundred and forty-seven years ago, a bunch of scrappy consumers—mostly consumers of tea, or so I gleaned from my history textbooks—rose up and declared independence, freeing themselves from the burdensome policies hamstringing their economy. The founders’ spirit of economic liberty, opportunity, and prosperity for all has

been a through-line from the Declaration of Independence to the passage of the Sherman Act of 1890, when the United States Congress struck a powerful blow against the trusts, which had cartelized our most vital industries, by outlawing monopolization. The Progressive Era built on those themes with the 1914 passage of the FTC Act, which established the FTC, and the Clayton Act, which further strengthened the antitrust laws. That legacy continued through the consumer-rights and civil-rights revolutions of the 1960s and 70s. And it lives on through today's widespread call to confront the enormous power of tech giants, firms that collect vast quantities of personal data and are positioned to dominate current and emerging markets from everyday commerce to generative artificial intelligence, facial recognition, and fintech.

The drive for economic liberty that animates the American experiment is as potent today as ever. But economic liberty is not a static state one achieves; instead, it is a constant pursuit, requiring ever-evolving enforcement and regulatory interventions to protect consumers and enable honest and innovative businesses to compete. That is why, in 2023, we must use every available tool to take on these marketplace challenges to ensure that prosperity and dignity remain available to everyone, everywhere.

With that lofty goal in mind, I want to share with you some reflections on how we at the United States Federal Trade Commission are using all the tools our Congress has given us to address emerging tech problems, including those presented by the large platforms. I'll start by describing the tools we have and how we are using them, and then I'll go into some specific topics we are tackling in tech markets.

Our remit to protect consumers from unfair or deceptive acts or practices was established 85 years ago, by amendments to the FTC Act in 1938. Under that law, the FTC has the authority to put a stop to deceptive or unfair acts or practices by bringing cases against individuals and

firms that violate the law. To ensure that case-by-case enforcement work effectively deters wrongdoing, we are taking a close look at our remedies and pursuing novel relief, such as monetary redress for the time consumers had to waste jumping through hoops. We are also regularly insisting that settling companies provide notice to their customers about their law violations, so that consumers can take action to protect themselves and make informed decisions about the companies with which they do business. And, finally, we are more frequently holding senior executives individually accountable for law violations to ensure that a culture of compliance starts from the top of firms. But case-by-case enforcement is not our only tool. It goes hand in hand with research, policy statements, and rulemaking.

On the research front, the FTC has a long and distinguished history of gathering information, studying problems deeply, and building a shared understanding of what problems exist in different markets. We hold workshops and issue reports that help deepen public understandings of problematic business practices and other market issues. Building on our expertise, the FTC endeavors to provide clarity to markets through policy statements that clearly identify our legal interpretations and enforcement priorities, particularly in emerging tech issues. Finally, we have formal rulemaking authority, which, while limited in scope, can provide clear rules of the road for emerging technologies and commercial practices. Congress gave the FTC the broad power to write rules to outlaw specific unfair or deceptive practices of the sort that we could also sue to stop through case-by-case enforcement. We recently conducted a careful review of our authority and identified some ways to improve the process so that it was more streamlined and effective, and now we are back in the business of using this important tool.

Today, the FTC is using all of these powers, and drawing on the expertise of our expanding staff of technologists and other specialists, to tackle the emerging tech issues that are

creating seismic shifts in the way the businesses are interacting with consumers in the marketplace. I will use the remainder of my time to talk about some specific examples of our multipronged approach, including: dark patterns, artificial intelligence, repair restrictions, the gig economy, and data abuses.

Dark patterns—the practice of using confusing design interfaces and other deceptive tactics—seem to be everywhere on the internet these days, especially with billing practices that trick users into unending subscription payments. And the FTC is taking a multipronged approach to dealing with them, combining enforcement actions, rulemaking, research, and education efforts.

Late last month, the FTC filed a major case against Amazon in which we allege that the company used dark patterns to trick consumers into joining Amazon Prime and to keep them from ever leaving, even naming the cancellation process “Iliad,” after the lengthy Greek epic poem. And, in addition to this pending litigation, we’ve had some substantial victories. Last year, Epic Games, the maker of Fortnite, agreed to refund hundreds of millions of dollars to consumers for deceptively inducing consumers into making in-game purchases. In that case, the FTC alleged that Epic used dark patterns to trick players into making unwanted purchases and let children rack up unauthorized charges without any parental involvement. Specifically, the FTC’s complaint alleged that Fortnite’s counterintuitive, inconsistent, and confusing button configuration led players to incur unwanted charges based on the press of a single button and also that the company made it easy for children to make purchases while playing Fortnite without any parental consent.

The FTC also brought a big case last year against Vonage, an internet phone-service provider, which agreed to refund \$100 million to consumers. In that case, the FTC had alleged

that Vonage had been imposing junk fees and using dark patterns to make it difficult for consumers to cancel and had often continued to illegally charge them even after they spoke to an agent directly and requested cancellation. Another important case, which we just settled with Publishers Clearing House, alleged the use of manipulative design techniques to mislead consumers, many of them seniors, about how to enter the company's well-known sweepstakes drawings and to make them believe that a purchase is necessary to win or would increase their chances of winning.

This enforcement work complements, and is complemented by, the Commission's important research and rulemaking in the area of dark patterns. Indeed, the Commission's first big foray into dark patterns online was not a splashy lawsuit but a 2021 workshop focused on information-gathering, which culminated in a 2022 staff report titled "Bringing Dark Patterns to Light." Building on our cases and this research, the Commission recently proposed a "Click to Cancel" rule to address the dark pattern of subscription traps. If finalized, the rule would compel companies to make exiting a customer relationship as easy as entering.

We are similarly taking an all-hands approach to artificial intelligence, including generative AI. The FTC has made clear that we will enforce our existing laws as they apply to the deployment of AI tools, which can affect civil rights, fair competition, consumer protection, and equal opportunity. I explored this field in depth in a (lengthy) law review article two years ago. Our FTC Chair, Lina Khan, recently joined other U.S. agency heads in a statement that pledges to uphold the core principles of fairness, equality, and justice as new automated systems, including those sometimes marketed as AI, become increasingly common in our daily lives. My colleague Alvaro Bedoya has similarly underscored that, far from being an unregulated wild west, AI is subject to existing laws. Just as our 1938 prohibition on unfair or deceptive acts or

practices rose to the occasion of the internet's arrival and developed a workable set of privacy principles, it has also proved useful in tackling the new AI technologies that have captured global attention. More specific laws will likely be beneficial as well, but I think that it is especially important in this moment to push back against the notion that AI is unregulated. Our approach to AI will include case-by-case enforcement, and AI is already a focus in our ongoing Commercial Surveillance and Data Security Rulemaking proceeding. It is also the subject of business and consumer education, including a series of FTC blog posts warning against the deceptive marketing of AI products, the risk that generative AI will supercharge impersonation fraud, and the potential for AI to unfairly manipulate consumers.

Another pressing issue facing consumers in high-tech markets is repair restrictions, which can reduce the obscenely expensive devices on which we rely into mere paperweights as we are forced to rely on manufacturers' onerous and expensive conditions for repair. This is an area where our research work has been truly game changing in driving enforcement and policy. The FTC's staff studied the problem of repair restrictions, held a workshop, and took public comments, ultimately writing a powerful report I commend to you called "Nix the Fix." The report concluded, among other things, that there was "scant evidence" to support the justifications equipment manufacturers put forth for undermining independent repair markets.

The right-to-repair movement is spreading like wildfire in our state legislatures, buoyed as much by tinkerers who want to be able to fix their phones and tablets as by farmers who want to be able to fix their tractors. The FTC's report is proving to be extremely persuasive to state legislators, who are hearing from manufacturers' lobbyists, because it was grounded in fact, deeply researched, and supported by a unanimous and bipartisan group of Commissioners. The

FTC's research work in this area paved the way for important settlements with Harley-Davidson, the maker of the iconic motorcycle, and Weber, the maker of grilling equipment, among others.

In today's tech markets, it's important to recognize that many people interact with platforms not just as end-users but also as workers, and our consumer protection law has a role to play in making sure that they are treated fairly. The problems in the gig economy are clear: Companies control the workers without bearing a traditional employer's responsibilities; vast power asymmetries leave workers with little bargaining leverage; and network effects tend to lead to monopolistic or duopolistic markets. In early 2021, the FTC brought a case against Amazon Flex for deceptively diverting tips that customers intended for delivery workers. We returned more than \$61 million to those drivers. And we built on that enforcement work with a Gig Economy Policy Statement, which emphasizes that the FTC's enforcement priorities will concern unfair or deceptive pay practices, undisclosed costs or harmful terms, unfair or deceptive practices that are algorithmically generated, unfair restrictions on mobility and multi-homing, and important competition concerns such as wage-fixing. On the rulemaking front, we proposed an important new rule to promote competition in labor markets by banning most non-compete clauses that prevent workers from getting fair compensation and competition for their labor.

Finally, I know that most of your jurisdictions have separate data protection agencies; in the United States, the FTC is the primary privacy enforcer, and we bring most of our privacy cases under our general consumer protection authority. Even though these matters might be out of scope for many of you, they are worth mentioning today because the indiscriminate and unrelenting collection of personal data provides the fuel for the broader platform ecosystem that drives so many consumer protection concerns. As with the other topics I have discussed, our approach to data abuses is multifaceted. We recently settled enforcement matters against

Microsoft's Xbox, Amazon's Alexa, and Ring, all involving the illegal collection or retention of data. In those cases, we required the firms to give up not only the illegally acquired data but also any algorithms or other products that were developed with the data. To require less than that would allow lawbreakers to benefit from their schemes.

In addition to enforcement cases with effective remedies against data abuses, we are publishing policy statements to put markets on notice about our approach to these topics. This spring, for example, the FTC published its Biometric Policy Statement, which describes the agency's approach to the risks posed by technologies that use facial recognition, voice recognition, retina scans, fingerprints, and the like. In it, we articulate enforcement priorities for the unfair or deceptive use of biometric data, so the markets will be on notice about how the agency intends to approach the deployment of these technologies and protect consumers from possible harms. A final important policy statement we recently issued concerns children's privacy, for which we have a specialized law in the United States, called COPPA. In our 2022 policy statement on COPPA and education technology, the FTC warned that ed-tech companies cannot condition a child's learning on the parents' agreeing to extensive surveillance of their child.

There is much more I could mention—for example, our ongoing rulemakings to prevent fake reviews and junk fees, dozens of other important enforcement matters—but I have already been speaking for a long time at the end of a long day. So let me summarize: The FTC's approach to confronting these issues depends on deploying every tool we have, including securing effective and novel remedies, conducting research to inform our policy statements and priorities, reinvigorating our rulemaking practices to bring laws up to speed with the modern economy, educating businesses and consumers to keep them abreast of updates to regulations,

and most importantly collaborating with law enforcement and peer agencies in the United States and abroad to protect consumers.

Let me conclude on the point about collaboration. International collaboration is absolutely vital to our missions—you didn't think I flew all the way out here just for the chocolate, right? For the enforcement agencies here, I invite you to talk to me about the FTC's upcoming presidency of the International Consumer Protection and Enforcement Network for the year 2024–25. The FTC is also deepening our collaboration with sister federal agencies, such as through new memorandums of understanding that allow us to share information and develop cases together. And we are doubling down on our partnership with state law enforcers, including through investing in our regional offices far from our capital city. State attorneys general typically have not only the ability to enforce parallel state laws against unfair or deceptive acts or practices—they also often have the power to deliver consumer redress to those harmed by law violations, the very power our Supreme Court tragically limited for the FTC two years ago. Finally, we collaborate with the public. We have established a regular opportunity for anyone to address the FTC when we conduct open meetings, and many of our processes benefit enormously from robust public participation, including tips and complaints that can lead to law enforcement actions. I am so grateful for our state, federal, and international partners as well as the ordinary consumers who raise their voices and make our work better.

Thanks to the organizers of this terrific event for the opportunity to share these thoughts with you today.