



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

February 20, 2013

Mr. Marc Rotenberg, Executive Director  
Mr. David Jacobs, Consumer Protection Counsel  
Ms. Khaliah Barnes, Administrative Law Counsel  
Electronic Privacy Information Center  
1718 Connecticut Ave., NW  
Suite 200  
Washington, DC 20009

*Re: In the Matter of Compete, Inc., File No. 1023155, Docket No. C-4384*

Mr. Rotenberg, Mr. Jacobs and Ms. Barnes:

Thank you for your comment, on behalf of the Electronic Privacy Information Center (“EPIC”), regarding the Federal Trade Commission’s consent agreement in the above-entitled proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission’s Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

Your comment notes EPIC’s support for the settlement with Compete, Inc. (“Compete”). Your comment also recommends that the Commission implement certain measures addressing privacy and security in general, and recommends a change to the proposed order. We discuss these below.

First, your comment expresses support for the complaint allegation that Compete deceptively omitted material information, and requests that – separate from this proposed order – the Commission amend its Policy Statement on Deception to “explicitly categorize omissions impacting consumer privacy as deceptive under Section 5.” As defined in the Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984), a “misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed.” *Id.* at n.4. The Commission has challenged material deceptive omissions in a number of privacy-related cases. *See, e.g., Sears Holdings Mgmt. Corp.*, FTC Docket No. C-4264 (Aug. 31, 2009) (final consent order); *Facebook, Inc.*, FTC Docket No. C-4363 (Aug. 10, 2012) (final consent order). The Policy Statement is a broad document that sets forth the Commission’s general approach to deceptive acts or practices with respect to all types and aspects of business activities. Accordingly, we do not believe that revising the Policy Statement to refer specifically to particular areas of business activity is appropriate. The FTC endeavors to provide more specific

guidance as to particular subjects, as warranted, through a variety of mechanisms, including policy reports and warning letters.

Similarly, you suggest that – separate from this proposed order – the Commission develop a best practice guide for anonymization techniques. The proposed order requires that Compete only use certain data in anonymized and aggregate form, and you note that businesses and consumer groups could benefit from “something more concrete against which to measure claims of de-identification and anonymity.” As you have noted, our chief technologists have discussed some anonymization techniques as an aid to industry.<sup>1</sup> However, generally, the Commission does not provide specific technical guidance in areas like this, which are constantly changing. It is a company’s responsibility to keep abreast of and select the technology that it believes best meets its needs and requirements while appropriately protecting consumer privacy. Indeed, in the Commission’s March 2012 report, “Protecting Consumer Privacy in an Era with Rapid Change: Recommendations for Businesses and Policymakers,” *available at* <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>, the Commission noted that as a policy matter, consistent with its approach in its data security cases, what qualifies as reasonable measures to ensure that data is de-identified is not an absolute standard, but instead depends upon the particular circumstances, including the available methods and technologies, the nature of the data at issue and the purposes for which it will be used. *Id.* at 21-22.

In addition, you have requested that the assessments a company is required to produce pursuant to its settlement agreement with the FTC routinely be made public. As the Commission has noted previously,<sup>2</sup> it recognizes the public interest in transparency regarding a company’s compliance with an FTC order. The public may seek such documents under the Freedom of Information Act (“FOIA”),<sup>3</sup> and the FTC is required to post such documents on its public record if they have been frequently requested and released under FOIA.<sup>4</sup> However, compliance reports and assessments may contain trade secrets or other confidential commercial or financial information, or information about consumers or other third parties, that the Commission may not publicly disclose.<sup>5</sup> An analysis of what may be disclosed pursuant to the law will depend upon the facts of each situation.

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<sup>1</sup> Tech@FTC is available at <http://techatftc.wordpress.com>.

<sup>2</sup> See, e.g., Letter from Donald S. Clark, Secretary, Fed. Trade Comm’n, to Marc Rotenberg et al. (Aug. 30, 2012), available at <http://ftc.gov/os/caselist/1023058/120911myspaceletterepic.pdf>, and Letter from Donald S. Clark, Secretary, Fed. Trade Comm’n, to Marc Rotenberg et al. (Oct. 13, 2011), *available at* <http://ftc.gov/os/caselist/1023136/111024googlebuzzepic.pdf>.

<sup>3</sup> See 5 U.S.C. § 552 *et seq.*

<sup>4</sup> Such documents are posted at the FTC’s Frequently Requested Records webpage, *available at* <http://www.ftc.gov/foia/frequentrequest.shtm>.

<sup>5</sup> See 15 U.S.C. § 46(f) (“the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential”); Commission Rule of Practice § 4.10.

With respect to the proposed order itself, you propose that we require the company to allow consumers greater individual control over the types of information Compete collects and discloses. Your comment states that the proposed consent agreement requires Compete to implement certain Fair Information Practices, but requests that the Commission require Compete to comply with all of the Fair Information Practices in the Consumer Privacy Bill of Rights.<sup>6</sup> The Commission, as you point out, highlighted a number of these principles in its March 2012 Privacy Report, “Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers.”<sup>7</sup> However, a settlement agreement is designed to address specific conduct alleged in a complaint, and may not impose additional obligations that are not reasonably related to such conduct or preventing its recurrence.

In light of these considerations, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without any modifications. The final Decision and Order and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work. The Commission thanks you again for your comment.

By direction of the Commission, Chairman Leibowitz and Commissioner Wright not participating.

Donald S. Clark  
Secretary

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<sup>6</sup> *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (Feb. 2012), available at <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

<sup>7</sup> FTC, *Protecting Consumer Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers* (Mar. 2012), available at <http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>.