July 23, 2013

Hon. Lee Terry (R-NE-02)
Chairman
Commerce. Manufacturing & Trade Subcommittee

Hon. Jan Schakowsky (D-IL-09)
Ranking Member
Commerce. Manufacturing & Trade Subcommittee

Re: Tomorrow's hearing on EU-US Free Trade Agreement

Dear Chairman Terry and Ranking Member Schakowsky,

On behalf of the Marketing Research Association (MRA), I write in hopes that you will take the opportunity of your Subcommittee hearing on July 24 regarding the Transatlantic Trade and Investment Partnership (TTIP) to consider the issues of data privacy and cross-border data trade between the US and European Union (EU). This is urgent given reports that European officials, including European Commission Vice President Viviane Reding, have threatened the standing of the US-EU Safe Harbor.[1]

MRA, a non-profit national membership association, represents the survey, opinion and marketing research profession[2] and strives to improve research participation and quality. We are keenly focused on data privacy, since personal data is essential to the research process and our ability to deliver insights to our clients.

The 1998 European Commission's Directive on Data Protection ("Data Directive") prohibits the transfer of "personal data" to non-EU nations that do not meet the European "adequacy" standard for privacy protection. The EU Data Directive places significant restrictions on the collection, use and disclosure of personal data that prove taxing for many researchers. Despite some complaints that the US, unlike the EU, lacks an organized and comprehensive federal privacy law, EU privacy law is not perfectly organized either, fragmented across its member states, with each implementing the Data Directive differently.

Intentionally or not, the EU wields the Data Directive and its "adequacy" standard as an anti-competitive trade measure, discriminating against US companies in digital trade because they do not deem the US to have "adequate" data privacy protections. Fortunately, in addition to adopting binding corporate rules, US companies can self-certify to the US Department of Commerce that they comply with the seven principles of the US-EU Safe Harbor[3] and at least have some mechanism for data

[1] "EU questions decade-old US data agreement." By Nikolaj Nielsen. EUObserver.com, July 22, 2013. http://euobserver.com/justice/120919

[2] The research profession is a multi-billion dollar worldwide industry, comprised of pollsters and government, public opinion, academic and goods and services researchers, whose members range from large multinational corporations and small businesses to academic institutes, non-profit organizations and government agencies.

[3] Notice, Choice, Onward Transfer (to Third Parties), Access, Security, Data Integrity and Enforcement. http://export.gov/safeharbor/eu/index.asp

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transfer. While it is a self-certification, the Federal Trade Commission (FTC) enforces compliance with the Safe Harbor under its Section 5 authority to prosecute deceptive practices (not living up to one's public claims).

As the EU tries to rewrite their Data Directive, it is essential that we maintain the Safe Harbor – our primary protection for the conduct of digital commerce and research.

Of course, defending our interests is good, but advancing our interests is better. Comprehensive data privacy proposals have been advanced for the last few years by the FTC, the White House, and Members of Congress. All of them hope to better emulate the EU privacy regime in hopes that the US will be deemed "adequate" in its privacy protections by the EU.

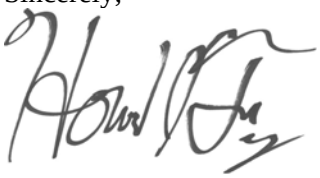
While MRA supports some form of baseline consumer data privacy law, the expansive measures envisioned by some parties go far beyond the baseline – with questionable promise of success. "Harmonization" of US law to an EU standard may not make the most sense economically. As outlined by several large technology companies' chief privacy officers at an Internet Association panel discussion on March 5, innovative data businesses generally develop and grow in the US, not in Europe, and our approach to data privacy may be a key factor in our competitive advantage.[4]

More importantly, over the course of many public and private engagements in the last year, Members of the European Parliament and European Commission have indicated that none of the comprehensive proposals offered so far in the US would, if enacted, win the US the coveted "adequacy" designation by the EU. It is possible that nothing short of a complete substitution of EU law for US law would satisfy EU authorities.

MRA asks that you consider the importance of "harmonization" of the US and EU privacy regimes as a part of this hearing, but not in the traditional way that the term is used. There may be great value to both sides of the Atlantic in bringing our privacy approaches closer together. However, the concept of harmonization should focus more on modeling EU law after the strong enforcement mechanisms and self-regulation of the US.

We look forward to the Subcommittee's hearing tomorrow and hope you will address the importance of maintaining the US-EU Safe Harbor and the potential for harmonizing EU data privacy law to a more entrepreneurial approach.

Sincerely,



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Marketing Research Association (MRA)

[4]"Corporate privacy officers discuss global compliance, trans-Atlantic competition, a comprehensive privacy law, and the US-EU Safe Harbor." March 7, 2013. http://www.marketingresearch.org/news/2013/03/07/corporate-privacy-officers-discuss-global-compliance-trans-atlantic-competition-a-co

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