

February 20, 2019

Chairman Joe Simons
Federal Trade Commission
Washington, D.C.

Dear Chairman Simons and Members of the Commission,

We write to you about the reports that Google installed secret microphones in Nest Secure devices.¹ Consumers recently discovered that the home security system contained a hidden microphone after Nest announced a software update that allows Nest devices to double as Google Home Assistants. It is entirely unclear whether Google, a remote hacker, or anyone else enabled the microphones in the Nest devices after they were installed by customers in their homes.

In 2014, EPIC filed a complaint with the Commission regarding a related merger review and noted specifically that the “Commission clearly failed to address the significant privacy concerns presented in the Google acquisition of Nest.”² EPIC said at the time that the “early termination” approval of the Google/Nest merger was surprising given the Commission’s extensive consideration of the Google acquisition of Doubleclick.³ EPIC said also that the “Commission clearly failed to address the significant privacy concerns presented in the Google acquisition of Nest.”

The Commission should have conducted a more rigorous review. And Google’s claim that this was an oversight is hard to take seriously after it was revealed, over the company’s strenuous objections, that the company’s “Street View” vehicles were intercepting wireless communications and downloading passwords and private emails. But it is not too late. The FTC should now commence an enforcement action against Google with the aim of divesting the company of Nest and requiring also that Google disgorge the data it wrongfully obtained from Nest customers.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Christine Bannan

Christine Bannan
EPIC Consumer Protection Counsel

Cc: Senate Commerce Committee
House Energy and Commerce Committee
Attorney General (regarding possible violations of the Federal Wiretap Act)

¹ Nick Bastone, *Google says the built-in microphone it never told Nest users about was 'never supposed to be a secret'*, Business Insider (Feb. 20, 2019), <https://www.businessinsider.com/nest-microphone-was-never-supposed-to-be-a-secret-2019-2>

² EPIC, *In the Matter of WhatsApp Inc.*, (Mar 21, 2014) (Supplemental materials), <https://epic.org/privacy/internet/ftc/whatsapp/WhatsApp-Nest-Supp.pdf>

³ Fed. Trade Comm’n, *Early Termination Notices, 20140457: Nest Labs, Inc., and Google, Inc.*, (Feb. 4, 2014), <http://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20140457>.