



Office of the Chair

December 11, 2023

The Honorable Robert P. Casey, Jr.  
United States Senate  
Washington, D.C. 20510

Dear Senator Casey:

Thank you for your letter expressing your concerns about unfair pricing practices of major chicken and pork processors in the United States. Given the high stakes for American consumers, workers, farmers, growers, local communities, and the nation's economy, policing potentially anticompetitive conduct in food industries continues to be a top Commission priority.

The FTC is generally limited in its jurisdiction over meatpackers to activities not regulated by the United States Department of Agriculture (USDA) under the Packers and Stockyards Act.<sup>1</sup> The FTC, USDA, and the Antitrust Division of the United States Department of Justice (Antitrust Division) have entered into a memorandum of understanding that reflects the FTC's role in supporting the USDA.<sup>2</sup> The FTC welcomes the opportunity to collaborate with its federal partners to improve antitrust enforcement and promote competition in line with the President's Executive Order on Competition.<sup>3</sup>

I am committed to using all available agency tools and statutory authority to stop anticompetitive conduct. To avoid duplication and maximize the effectiveness of concurrent federal antitrust jurisdiction, the Commission and the Antitrust Division have long maintained a liaison arrangement through which we divide responsibility for antitrust review based on statutory authority and other factors. Pursuant to that arrangement, the FTC will defer to the Antitrust Division with respect to any potential investigation into possible anticompetitive conduct by chicken and pork processors. I have taken the liberty of forwarding your letter to the Antitrust Division.

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<sup>1</sup> 7 U.S.C. 181, *et seq.*

<sup>2</sup> Per the longstanding cooperative arrangement between the three agencies and as recorded in the 1999 Memorandum of Understanding Relative to Cooperation With Respect to Monitoring Competitive Conditions in the Agricultural Marketplace, designated agency representatives confer as appropriate to discuss competitive conditions in the agricultural marketplace, and the agencies share information (subject to applicable confidentiality restrictions) relevant to their respective oversight responsibilities. Fed. Trade Comm'n, U.S. Dep't of Justice & U.S. Dep't of Agric., Interagency Memorandum of Understanding (MOU) between Federal Trade Commission (FTC), the U.S. Department of Justice (DOJ), and the U.S. Department of Agriculture (USDA) (Sept. 1999), <https://www.ftc.gov/policy/cooperation-agreements/interagency-memorandum-understanding-mou-between-federal-trade>.

<sup>3</sup> Exec. Order No. 14036, Promoting Competition in the American Economy, §1 (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

Thank you again for raising your concerns. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

cc: Secretary Tom Vilsack  
United States Department of Agriculture  
1400 Independence Ave., SW  
Washington, DC 20250

The Honorable Jonathan Kanter  
Assistant Attorney General  
United States Department of Justice, Antitrust Division  
950 Pennsylvania Ave., NW  
Washington, DC 20530



Washington, DC 20515

December 11, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan:

Deregulation of the residential electric supply market promised to bring consumers in Massachusetts and other states a choice of electricity supply providers and lower bills. Instead, consumers — disproportionately in low-income communities and communities of color — have endured unfair and deceptive marketing and sales tactics by competitive electric suppliers, saddling those consumers with higher electric bills and costing them hundreds of millions of dollars in net losses, with knock-on effects that delay climate action. The Federal Trade Commission (FTC) needs to intervene, investigate, and rigorously enforce consumer protection laws against an industry that too often preys on, misleads, and overcharges vulnerable consumers for a basic and essential service.

In the late 1990s, Massachusetts and other states enacted legislation allowing residents to buy electricity from a supplier other than their default utility.<sup>1</sup> Underlying this deregulatory effort was the assumption that competition in the market for residential electricity would bring lower power prices for customers. But the *Wall Street Journal*, for example, found that “in nearly every state where they operate, retailers have charged more than regulated incumbents.”<sup>2</sup> Specifically, data from Massachusetts, Connecticut, Illinois, Maine, Maryland, New York and Pennsylvania “confirm that families pay far too much when they sign up for alternative electric supply instead of sticking with their utility companies.”<sup>3</sup>

Competitive electric suppliers, such as Liberty Power and Starion Energy, have fleeced Massachusetts consumers. As Massachusetts Attorney General Andrea Joy Campbell recently explained in testimony before the state legislature: “From Boston to Lawrence to Lynn — and beyond — we have seen again and again Massachusetts residents being targeted by competitive electric suppliers. And these suppliers use deceptive marketing tactics that hide the fact that their products do not provide consumers with meaningful savings and in fact, can result in higher utility bills.”<sup>4</sup> Indeed, Attorney General Campbell’s office has found that, in the last seven years,

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<sup>1</sup> Mass. Gen. Laws ch. 164, § 1 (1997).

<sup>2</sup> Scott Patterson & Tom McGinty, *Deregulation Aimed to Lower Home-Power Bills. For Many, It Didn’t*, Wall St. J. (Mar. 8, 2021) (emphasis added), <https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623?page=16>.

<sup>3</sup> Jenifer Bosco, *Retail ‘choice’: A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearages-renewable-energy-community-choice/694355/>.

individual residential customers who received their electric supply from competitive suppliers paid \$607 million more on their electric bills than they would have paid to their default utility.<sup>5</sup>

Especially troublesome, the Attorney General's Office found that competitive electric suppliers have targeted vulnerable populations:

- low-income customers in Massachusetts are nearly twice as likely to sign up with individual competitive electric suppliers and are charged higher rates than non-low-income customers;
- assuming 600-kilowatt hour per month usage, typical for a Massachusetts household, an average non-low-income customer who signed up with a competitive supplier lost \$222 per year while the average low-income customer lost \$254 per year;
- low-income customers collectively experienced an annual net loss of more than \$20 million due to higher rates and additional monthly fees;
- communities of color, communities with low median incomes, and communities with high percentages of residents lacking English proficiency correlate with higher rates of participation in the individual residential market for electric supply;<sup>6</sup> and
- customers of advanced age who cannot understand the transaction or are particularly vulnerable are targeted and subjected to aggressive sales tactics.<sup>7</sup>

The competitive electric suppliers and their marketing agents have engaged in myriad unfair and deceptive acts and practices to lure consumers into oppressive retail electricity contracts, including:

- selling unnecessary "price protection" or "rate increase" protection products by convincing customers that electricity prices would otherwise soar without the protections;
- misleading customers about the actual difference in price between the competitive plan and basic utility service;

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<sup>4</sup> Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023); see Miriam Wasser, *Why a plan to drive down electric prices in Mass. led to higher bills*, NPR (May 8, 2023), <https://www.wbur.org/news/2023/05/08/massachusetts-eversource-national-grid-third-party-competitive-electricity>.

<sup>5</sup> Remarks of Attorney General Andrea Joy Campbell before the Joint Committee on Telecommunications, Utilities and Energy, Massachusetts House of Representatives (Sept. 21, 2023).

<sup>6</sup> *Id.*; Susan M. Baldwin & Timothy E. Howington, *Consumers Continue to Lose Big: the 2023 Update to An Analysis of the Individual Residential Electric Supply Market in Massachusetts*, Massachusetts Attorney General's Office (May 2023), <https://www.mass.gov/doc/consumers-continue-to-lose-big-the-2023-update-to-an-analysis-of-the-individual-residential-electric-supply-market-in-massachusetts/download>.

<sup>7</sup> *In re Liberty Power Holdings LLC*, Addendum to Proof of Claim Filed by the Commonwealth of Massachusetts, Case No. 21-13797-SMG (Bankr. S.D. Fla.).

- failing to disclose industry consensus about price drops and that, if basic service prices decreased, consumers would pay higher prices under the competitive plan;
- failing to disclose that the customer's introductory rate would automatically renew to a higher variable rate;
- falsely stating the rates that customers currently paid for basic service in order to trick them into signing up for contracts that charged an even higher rate than those the customers were currently paying; and
- switching customers from their utility to competitive services without authorization, a practice known as "slamming."

Competitive electric supplier scams come with another high cost — climate change. Massachusetts and other states are working hard to transition from dirty fossil fuels to a clean energy future. But when consumers see high electric bills due to inflated prices charged by non-utility energy supply companies, they "may be understandably hesitant to switch their home heating and appliances from gas-powered to electric."<sup>8</sup> One way to help keep the cost of electricity low is to stop competitive electric suppliers from conning consumers out of hundreds of million dollars for the same electricity they would have received if they had just stayed with their local utility.

The Massachusetts Attorney General's Office, like other states' consumer protection watchdogs, has taken enforcement action against competitive electric suppliers who engage in wrongful marketing and sales practices. But many of these bad-actor competitive electric suppliers operate across state lines, which makes enforcement actions time-consuming and difficult for state officials, thereby warranting federal intervention. Indeed, after ten years pursuing competitive electric suppliers, the Massachusetts Attorney General's office has recovered only \$19 million — a small fraction of the more than \$600 million lost.<sup>9</sup>

Under the FTC Act, the Commission is charged with protecting consumers from "unfair or deceptive acts or practices."<sup>10</sup> In 2020, then-FTC Commissioner Rohit Chopra said that the agency had a key opportunity to "reduce residential consumers' burdensome energy costs" by taking action against "unscrupulous energy suppliers that employ deceptive marketing practices to entice consumers to switch from their local distribution company's services."<sup>11</sup> As these

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<sup>8</sup> Jenifer Bosco, *Retail 'choice': A bad deal for consumers and the planet*, Utility Dive (Sept. 22, 2023), <https://www.utilitydive.com/news/retail-choice-bad-deal-consumers-arrearages-renewable-energy-community-choice/694355/>.

<sup>9</sup> Chris Lisinski, State House News Service, *Mass. leaders eye changes to 'predatory' electric sales tactics*, WBUR (June 6, 2023), <https://www.wbur.org/news/2023/06/06/mass-leaders-eye-changes-to-predatory-electric-sales-tactics>.

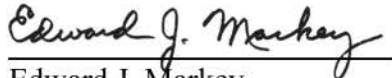
<sup>10</sup> 15 U.S.C. § 45.

<sup>11</sup> Rohit Chopra, *Statement: Regarding the FTC EnergyGuide rule*, U.S. Federal Trade Commission (Dec. 22, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1585238/20201222\\_final\\_chopra\\_statement\\_on\\_ene\\_rgyguide\\_rule.pdf](https://www.ftc.gov/system/files/documents/public_statements/1585238/20201222_final_chopra_statement_on_ene_rgyguide_rule.pdf).

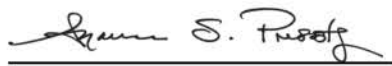
practices have continued in the intervening years, the FTC still has both the opportunity and the responsibility to protect consumers.

As colder weather approaches and competitive electric suppliers across the nation continue to prey on fears of high electricity bills, the FTC must signal it will not tolerate business as usual by competitive electric suppliers. These suppliers continue to target vulnerable populations, engage in unlawful tactics, and dramatically overcharge consumers — precisely the types of wrongdoing against which the FTC is empowered to act to protect consumers. We urge the FTC to immediately open an investigation into the unfair and deceptive marketing acts and practices of competitive electric suppliers.

Sincerely,

  
Edward J. Markey  
United States Senator

  
Elizabeth Warren  
United States Senator

  
Ayanna Pressley  
Member of Congress

# United States Senate

WASHINGTON, DC 20510

December 12, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Assistant Attorney General Kanter and Chair Khan,

We write regarding algorithmic competition issues. In today's digital economy, algorithms often set the prices we pay for goods and services, the search results and products returned when searching online, the ads we see, and the terms of financial products like loans, mortgages, or insurance. As the Chair and Ranking Member of the Subcommittee on Competition Policy, Antitrust, and Consumer Rights, we believe it is critical that antitrust enforcers are vigilant in enforcing our antitrust laws even when the conduct takes place in the code of an algorithm.

We have already seen the use of algorithms create competition issues across a variety of markets. For example, there is now pending antitrust litigation against RealPage and similar companies. We explored this issue in a recent Subcommittee hearing on competition issues in housing markets. Hotel operators in Las Vegas have similarly been accused of using pricing algorithms to increase prices along the Vegas Strip. Last year, we introduced the AMERICA Act that would break up Big Tech's vice grip on digital advertising and eliminate monopoly rents dictated by algorithms on every ad.

We appreciate that the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have recognized the potential risks to competition. For example, the FTC's recent lawsuit against Amazon alleged that it used "algorithmic disciplining" to maintain its monopoly power in ecommerce-related markets. And the DOJ's two lawsuits against Google alleged that it monopolized key digital advertising technologies and internet search. The DOJ also filed an amicus brief explaining how the use of algorithms may constitute price-fixing under our antitrust laws.

With the proliferation of artificial intelligence-based technologies, we are concerned these harms could become more frequent and harder to detect. As algorithms are able to process more data, new harms may appear. Algorithms programmed to maximize profits may also learn to interact in ways that result in cartel-like behavior without any humans ever entering an agreement. And the more firms rely on algorithms in their businesses, the greater their incentive will be to track

users and collect data to feed to those algorithms, which raises additional concerns around user privacy.

Of course, we expect firms to innovate and adopt new technologies to vigorously compete. The adoption of algorithmic and artificial intelligence tools present opportunities for increased efficiencies and new businesses. However, it is critical firms use these new technologies to vigorously compete, benefiting consumers, rather than to collude, fix prices, or decrease quality.

We ask that you provide the following information to help Congress understand what steps your agencies are taking to ensure consumers are not harmed by the proliferation of algorithms and outline what additional tools or authorities, if any, your agencies may need to effectively carry out that mission.

1. What uses of algorithms most concern you from a competition standpoint?
2. What steps are you taking to ensure that you have the appropriate expertise to properly investigate potential anticompetitive uses of algorithms?
3. What consumer protection issues may arise from the collection of data necessary to operate sophisticated algorithms?
4. Are there potential gaps in the current competition laws that make it difficult to prosecute anticompetitive uses of algorithms?
5. What additional tools or authorities do you need to investigate and prosecute uses of algorithms that harm competition?

Sincerely,



Amy Klobuchar  
United States Senator



Mike Lee  
United States Senator





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053720 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 18, 2023

The Honorable Elizabeth Warren  
United States Senate  
Washington, D.C. 20510

Dear Senator Warren:

Thank you for your November 8, 2023, letter to the Federal Trade Commission (“Commission” or “FTC”) regarding the Amgen, Inc./Horizon Therapeutics plc merger. I appreciate the opportunity to address concerns about consolidation in the healthcare industry.

I share your concerns about the ways that anticompetitive mergers and acquisitions and other unlawful conduct can undermine affordable, accessible, and high-quality healthcare. Ensuring that the agency addresses unlawful transactions and polices illegal anticompetitive conduct—especially in critical healthcare markets, including pharmaceuticals—is a top priority for me.

Unlawful M&A is one tactic that pharmaceutical companies can use to subvert fair competition. The FTC’s consent order with Amgen, and most recently, the agency’s move to block Sanofi’s acquisition of a nascent competitor, demonstrates our commitment to policing consolidation in pharmaceutical markets. Beyond M&A, pharma companies can also unlawfully claim patent protection for medical products, which deprives Americans of generic competition and keeps prices artificially inflated. In this vein, we recently challenged over 100 patents spanning several essential medical devices used by millions of Americans, including inhalers and epinephrine injectors. If we are successful, our actions could spur more competition and, in turn, lower the cost of life-saving drug products for patients.

The FTC’s inquiry into the opaque practices of pharmacy benefit managers under Section 6(b) of the FTC Act is another crucial aspect of our work in healthcare markets. Public reports and comments lay out how PBMs abuse their middleman position to raise drug prices and undercut independent pharmacies that often serve rural communities or more vulnerable populations. As drug prices have soared and independent pharmacies across the country have shuttered, investigating the business practices of PBMs is more urgent and critical than ever.

More broadly, we have vigorously policed consolidation in healthcare markets and moved to block five health system mergers that we alleged would have raised prices, harmed workers, suppressed innovation, or decreased the quality of care for patients. And in a first-of-its-kind lawsuit, we sued U.S. Anesthesia Partners and a New York-based private equity firm, Welsh, Carson, Anderson & Stowe, alleging that they rolled-up anesthesiology practices in

Texas—driving up prices to boost their own profits. While serial acquisition schemes, which are increasingly common in healthcare markets, have evaded antitrust scrutiny, the FTC is putting market participants on notice that antitrust laws squarely apply. We have proposed core updates to our merger policy, such as the merger guidelines, to more effectively identify and combat unlawful serial acquisition strategies.

Safeguarding competition and tackling anticompetitive conduct in healthcare markets can have life-or-death consequences for American families. That is why we are using the full scope of the FTC's tools and authorities to protect Americans' access to affordable, high-quality care. I can assure you that the agency is vigilant in its oversight of healthcare markets and will not hesitate to take strong and appropriate action against any activity that violates statutes or orders that we enforce.

Thank you again for raising this topic and for your interest in these issues. If you or your staff have any questions, please contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair  
Federal Trade Commission



# United States Senate

WASHINGTON, DC 20510-0805

December 21, 2023

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Chair Khan and Assistant Attorney General Kanter:

As a U.S. Senator who shares your goals of promoting fair market competition and pursuing effective law enforcement against anticompetitive business practices, I write to express my concern with the Notice of Proposed Rulemaking (NPRM) regarding the premerger notification form and associated instructions, as well as the premerger notification rules implementing the Hart-Scott-Rodino (HSR) Act. While I recognize the government's interest in collecting information regarding mergers and acquisitions in order to effectively enforce antitrust laws, I believe the proposed rules, if enacted, would place a significant and unnecessary burden on parties to many non-problematic and beneficial transactions, especially parties looking to execute smaller transactions just above the disclosure threshold. The proposed rules would likely stack unnecessary costs on parties with little capacity to shoulder them and may deter businesses from undertaking productive economic activity altogether. Neither outcome is positive for consumers, the transacting parties, or the American economy.

As many as 3,000 mergers and acquisitions are reported to the antitrust agencies each year. The HSR Act directs the agencies to collect information that is "necessary" and "appropriate" to perform an initial analysis of these transactions; on the basis of this analysis, the agencies may seek additional information on transactions that present concerns regarding their effect on competition. This two-stage process of review has worked well. It has enabled about 98 percent of reported transactions to clear without further engagement from the government, while allowing the agencies to use their limited resources to seek more information regarding those transactions that deserve closer scrutiny. It is possible that some additional fraction of transactions merit closer scrutiny from the government, but I am not aware of any evidence that the agencies routinely neglect to review a significant number of anticompetitive transactions.

Your proposed changes to the existing HSR process would require parties to every reportable transaction to provide substantial additional information. The NPRM estimates that this additional reporting will result in about \$350 million in additional filing costs—a nearly 400% increase in the burden for a typical transaction—and others have estimated those figures could be far higher. This additional burden may constitute a modest marginal cost for parties to transactions valued in the billions or tens of billions of dollars, but the burden would be far more significant for parties to smaller transactions who may not have the resources or systems in place to generate and collect the

new categories of information required under the proposed rule. I am seriously concerned that increasing the burden of the initial stage of the review process four-fold or more would impose a significant and unnecessary cost on many transactions—especially those close to the HSR reporting threshold—and further that such a burden could prove prohibitive for many transactions, leading to a decline in beneficial economic activity.

I appreciate that the NPRM has publicly acknowledged that the proposed rules would require significant additional reporting and that the agency has requested input on ways to lessen the burden of collecting this information. As you move forward with this rulemaking, I ask that you pay particular attention to the economic costs of this additional reporting—especially with respect to smaller transactions—and revise the proposed rule so that it does not require parties to bear unnecessary or unjustifiable burdens in meeting the requirements of law. Thank you for your attention to this matter.

Regards,

A handwritten signature in black ink, appearing to read "Chris Coons". The signature is fluid and cursive, with the first name "Chris" and last name "Coons" clearly distinguishable.

Christopher A. Coons  
United States Senator

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-5301

December 4, 2023

Honorable Lina M. Khan  
Chair, Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Opposition to the Proposed Acquisition of Hawaiian Airlines by Alaska Airlines

Dear Chair Khan:

On Sunday, it was announced that Alaska Airlines has agreed to acquire Hawaiian Airlines for \$1.9 billion. I have serious concerns about the economics of this merger, and request that the FTC and DOJ exercise their oversight capability to the full extent possible in order to ensure this merger is not an illegal concentration of market power. I believe that this merger would likely further concentrate market share in the top airlines serving the Pacific region and would be harmful for American consumers.

Today, the air travel market is dominated by a few large carriers; their size being a direct result of various mergers and acquisitions over time approved under lax regulators. These large airlines undoubtedly hurt our consumers and have led to high ticket prices and uncompetitive business practices. In recent years, we have seen large airlines attempt to acquire smaller carriers, moves that would only reduce competition. Because the DOJ has stepped in, these acquisitions were delayed pending judicial review. As a direct result of this, the airline market is stable, prices in former Spirit routes have not shot up, and consumers have options when deciding which airline to fly.

In 2016, Alaska successfully acquired Virgin America, in a move aimed at reducing competition on the West Coast, in the years following, Alaskan systematically

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-5301

dismantled what remained of Virgin, by selling off purchased aircraft<sup>1</sup> and eventually scrapping the airline entirely. It is my fear that if the FTC allows Alaska to acquire Hawaiian, we are perpetuating a dangerous business practice in the airline industry that would have seriously harmful implications for American consumers.

In 2016, when Alaska Airlines purchased Virgin, they played it coy, and their CEO went on CNBC claiming they would “look at the Virgin name and we will look at ways to use it into the future.”<sup>2</sup> This deal was consummated as a result of Virgin’s success in undercutting Alaska’s prices in the Seattle market, forcing Alaska to match the low cost carrier’s prices.<sup>3</sup> Once the deal had the blessing of the DOJ and Alaska felt enough time had passed, they folded Virgin airlines in 2019, just 3 years after the merger was approved by the DOJ.<sup>4</sup>

Alaska Airlines CEO Ben Minicucci has said the quiet part out loud, in the wake of news of his company’s acquisition of Hawaiian, telling his shareholders that this merger will allow Alaska to own a greater share of the market. Alaska Airlines is already the fifth-largest carrier in the United States, and acquiring Hawaiian would have little real benefits for the airline in market share. The real benefit is in eliminating a contender for West Coast routes, and capitalizing on the Hawaiian and Pacific Island routes that are already priced at a premium.

Where I am most concerned with this acquisition is in the Pacific market, namely Hawaii and American Samoa. In August 2023, Hawaiian Airlines served 46% of passengers out of Hawaii’s busiest airport, Daniel K. Inouye International Airport in Honolulu. This passenger share is roughly the same share as the four other largest carriers to Honolulu combined. If Alaska were to acquire Hawaiian, passenger share in Honolulu by Alaska Air Group would jump to **53%**<sup>5</sup>.

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<sup>1</sup> [Alaska Airlines to acquire Hawaiian Airlines in \\$1.9 billion deal \(cnbc.com\)](https://www.cnbc.com)

<sup>2</sup> [Alaska Air Buys Virgin America for \\$2.6 Billion \(skift.com\)](https://www.skift.com)

<sup>3</sup> [Why Did Virgin America Merge With Alaska Airlines? \(simpleflying.com\)](https://www.simpleflying.com)

<sup>4</sup> [Virgin America Vanishes Into Alaska Air With Branson’s Dream - Bloomberg](https://www.bloomberg.com)

<sup>5</sup> [RITA | BTS | Transtats](#)

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-5301

In American Samoa, Hawaiian holds 99% of the share of passengers that fly in and out of Pago Pago.<sup>6</sup> Following their acquisition by Alaska, it is essential any agreement between Alaska airlines and regulators ensure this route is not sold off to competitors or folded in favor of more profitable routes to and from the mainland.

Hawaii is one of the most popular tourist destinations for American consumers, and this acquisition would only give more market share to Alaska Air Group. This would undoubtedly lead to higher ticket prices for consumers wishing to travel to and from Hawaii and would have serious implications for the tourism industry that Hawaii so heavily relies on — higher prices leading to lower demand and thus fewer tourists.

Please do not hesitate to contact my office should you like to speak more regarding this matter.

Respectfully,



James C. Moylan  
Member of Congress



Ken Buck  
Member of Congress

CC: Jonathan Kanter, Assistant Attorney General for DOJ Antitrust Division,

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<sup>6</sup> RITA | BTS | Transtats

December 20, 2023

Dear Chairwoman Khan:

We are writing to urgently request that the Federal Trade Commission opens a full and rigorous investigation into data brokerage firms that are actively selling sensitive personal data belonging to United States service members, veterans and their families. A recent 12-month Duke University investigative study commissioned by the United States Military Academy<sup>1</sup> examined this issue and uncovered deeply troubling realities that warrant your office's immediate oversight.

Researchers systematically documented how expansive data on service members and veterans is being marketed and sold through U.S.-based data broker middlemen to purchasers both domestic and foreign with minimal verification procedures. This includes private financial statements, detailed health records, geographic locations and other data that could enable adversaries to exploit or harm those who have served our country.

The study found that purchasing non-public, highly sensitive information pertaining to individually identified active-duty and veteran populations was inexpensive and simple. For instance, private health data and records of financial liabilities were easily obtained for as low as \$0.12 per person. The procedures used by data brokers to authenticate purchasers were wildly inconsistent and devoid of sensible safeguards against fraudulent or dangerous actors acquiring such data.

Most concerning, according to the study, "the inconsistencies of controls when purchasing sensitive, non-public, individually identified data about active-duty members of the military and veterans extends to situations in which data brokers are selling to customers outside the United States." For example, in this study, the researchers used a .asia domain name, email address, and a Singaporean IP address to purchase individually identified information on 5,000 active-duty military service members and veterans. The dataset included name, home address, phone number, email, age, sex, marital status, homeowner status, estimated home value, charitable donations, interest in current affairs/politics, interest in gambling/casinos and other highly valuable personal information. Access to this data could be used by foreign and malicious actors to target active-duty military personnel, veterans and their families for profiling, blackmail, targeting with information campaigns, and more.

This largely unregulated environment that these firms operating in is alarming; U.S. authorities are allowing the wholesale trading of service members' confidential information without proper oversight. A solution would be to pass S.1029, Protecting Military Service Members' Data Act of 2023, which would prohibit data brokers from selling, reselling, trading, licensing, or otherwise providing for consideration lists of military service members to adversarial nations,<sup>2</sup> including China, Russia, Iran, and North Korea.

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<sup>1</sup> <https://techpolicy.sanford.duke.edu/data-brokers-and-the-sale-of-data-on-us-military-personnel/>

<sup>2</sup> <https://www.congress.gov/bill/118th-congress/senate-bill/1029/text>



We urge the FTC to leverage its full investigative power on this urgent matter given the threats posed to both national security and the privacy rights of the military community. Your inquiry should pursue several key aims:

- identifying the specific U.S. data broker firms involved in these dangerous practices;
- establishing what categories of service member and veteran data are being actively marketed;
- determining what foreign state or non-state entities have purchased said data;
- ascertaining whether and to what extent existing privacy or consumer protection laws limit the data brokers' actions;
- exploring policy solutions to regulate this industry and prevent future breaches.

The risks associated with the exposure of U.S. service members' sensitive personal data through unregulated data brokers cannot be overstated. Allowing this practice to continue unimpeded puts the safety, security and civil liberties of American heroes and their loved ones in jeopardy. We urge the FTC to launch a full investigation without delay and our offices stands ready to assist your essential work toward rectifying this untenable status quo.

Please advise if we can provide any additional supporting materials on this issue for the Committee's review as you examine next steps. Thank you for your swift attention on this urgent matter.

Sincerely,

Senator Bill Cassidy

Senator Elizabeth Warren

December 5, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Dear Chair Khan:

We write to request additional information about the Federal Trade Commission's (FTC) work to track the increasing use of artificial intelligence (AI) to perpetrate frauds and scams against older Americans. Safeguarding older Americans from frauds, scams, and financial exploitation has been a long-standing bipartisan priority of the Committee. The White House, in an Executive Order issued on October 30, 2023, also joined in calling for stronger protections from AI-enabled fraud and deception, specifically encouraging FTC to consider rulemaking to protect consumers and workers from AI harms.<sup>1</sup> In order to respond effectively, we must understand the extent of the threat before us; we ask that FTC share how it is working to gather data on the use of AI in scams and ensure it is accurately reflected in its Consumer Sentinel Network (Sentinel) database.

Sentinel is a secure online database where FTC stores reports regarding issues consumers have experienced in the marketplace, including scams perpetrated by individuals, businesses, or networks.<sup>2</sup> Similar to the Aging Committee's Fraud Hotline, consumers can report as much or as little as they wish when they file a report with FTC.<sup>3</sup> Data within Sentinel and details of each report are available to law enforcement, and FTC provides the public with an analysis of all reports received in the over year.<sup>4</sup> In 2022, Sentinel received over 5.4 million consumer reports, which were sorted into 29 top categories.<sup>5</sup>

Consumer reports are categorized based on the contact methods deployed by scammers, payment types, and fraud losses and reports by age. Over the years, FTC has updated these categories to incorporate emerging technology, like Peer-to-Peer (P2P) payment apps or services and cryptocurrency. However, references to AI are noticeably lacking in FTC's Sentinel.

AI is a broad term that refers to technology that can simulate human intelligence. Generative AI is a sub-field of AI that can be used to create original content—generative AI can power chatbots that copy writing styles, find personal information, create fake documents, create fake photos, and more.<sup>6</sup> Voice cloning and deepfakes are both examples of generative AI in use: voice cloning

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<sup>1</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>

<sup>2</sup> [https://www.ftc.gov/system/files/attachments/consumer-sentinel-network/sentinel\\_fact\\_sheet1\\_508.pdf](https://www.ftc.gov/system/files/attachments/consumer-sentinel-network/sentinel_fact_sheet1_508.pdf)

<sup>3</sup> <https://www.aging.senate.gov/fraud-hotline>

<sup>4</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/CSN-Data-Book-2022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Data-Book-2022.pdf)

<sup>5</sup> [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p144400olderadultsreportoct2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf) p. 25

<sup>6</sup> <https://www.crs.gov/Reports/R47569?source=search>



allows a user to mimic or impersonate the voice of loved ones, authorities, or celebrities; similarly, deepfakes are AI-generated images that can be used to spread misinformation and commit fraud.<sup>7</sup>

We know that AI is simply exacerbating the pervasiveness and effects of existing schemes. As FTC shared in its July 27, 2023 letter, frauds and scams involving AI typically fall into the following categories: (1) family emergency scams, where the scammer mimics the voice of a family member and asks for money; (2) romance scams, where the scammer fakes a love interest by using chatbots to send messages; (3) business-related scams, where the scammer acts as a high-ranking employee or other official to get businesses to complete wire transfers or send sensitive information; and (4) phishing scams, where scammers can easily and quickly deploy personalized email or text messages to convince targets to share their personal information.<sup>8</sup>

As the agency explores additional policymaking routes to put an end to these scams, older Americans are continuing to fall victim to these schemes. Where a consumer may have been able to easily identify and dismiss a scam before, now they face greater challenges in determining whether the email, text, or phone call they received is legitimate. Many times, the AI-powered scams seem so realistic that the victims do not know the scammers have utilized AI in targeting them. In these situations, generative AI can exacerbate the false panic and sense of urgency victims often feel when targeted, compelling them to turn over the private or financial information the scammer requests.

Unfortunately, it is evident that we still have a lot to learn about how AI will be utilized in the future against American consumers and older adults. While public reporting indicates that more families are being targeted by voice clones in family emergency scams, the number of Americans targeted by scammers using generative AI remains unknown. Efforts to educate the public, law enforcement, and policymakers should be informed by evidence-based data, similar to what is collected in Sentinel.

As FTC considers more strategies to safeguard older Americans and inform decision-making around generative AI, we request the following information by January 9, 2024.

1. How are AI-powered frauds and scams tagged and reported within Sentinel? If they are not identified, how will FTC ensure that they are identified moving forward? If these frauds and scams have been tagged and reported within Sentinel, what subcategories do these scams fall into?
2. Often times, consumers are unaware that scams have been deployed with the use of generative AI. How does FTC identify if AI was utilized by the scammer, if this is not readily identified by the consumer?
3. For AI-powered scams, based on available data, what is the breakdown between chatbots, voice cloning, deepfakes, phishing, spoofing, and other types of scams? How else has FTC observed the use of generative AI in scams?
4. How does FTC utilize AI in gathering, categorizing, and studying data reported to the agency and stored in Sentinel?

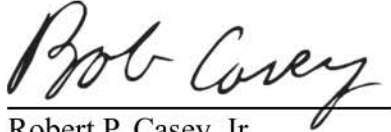
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<sup>7</sup> <https://www.crs.gov/Reports/R47569?source=search>

<sup>8</sup> FTC Response to Chairman Casey, July 27, 2023.

Thank you for your attention to this important issue. We look forward to your response.

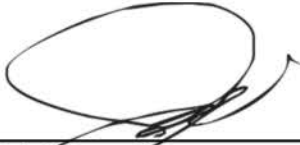
Sincerely,



Robert P. Casey, Jr.  
United States Senator  
Chairman, Special Committee  
on Aging



Richard Blumenthal  
United States Senator



John Fetterman  
United States Senator



Kirsten Gillibrand  
United States Senator



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053726 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 13, 2023

The Honorable Jasmine Crockett  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Crockett:

Thank you for your October 26, 2023, letter requesting that the Federal Trade Commission (“FTC” or “Commission”) investigate potential breaches of taxpayer privacy by tax preparation companies. I appreciate your interest in this matter.

I can assure you that as the nation’s consumer protection agency, the FTC shares your goal of vigorous enforcement against any company that engages in unlawful privacy practices that harm consumers. This is particularly the case when sensitive information, such as taxpayers’ financial information, is at issue.

The FTC has previously taken action against tax preparation companies for, among other things, failing to adequately protect consumers’ financial information. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer for failing to implement appropriate safeguards to protect consumers’ tax preparation information.<sup>1</sup> The Commission alleged that this failure allowed hackers to gain full access to consumers’ TaxSlayer accounts and use consumers’ sensitive personal information to commit tax identity theft.<sup>2</sup> The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers’ financial information.<sup>3</sup> The Commission also shares your interest in ensuring consumers are not faced with deceptive practices in the tax preparation process.

As referenced in your letter, the Commission further emphasized its commitment to holding tax preparation companies accountable by using its Notice of Penalty Offense (“NPO”) authority to warn five tax preparation companies that they could face potential civil penalties—up to \$50,120 per violation—if they use tax preparation information for advertising, including

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<sup>1</sup> Complaint, *In re TaxSlayer, LLC*, FTC File No. 1623063 (Nov. 6, 2017), <https://www.ftc.gov/legal-library/browse/cases-proceedings/162-3063-taxslayer-matter>.

<sup>2</sup> *Id.*

<sup>3</sup> See also Complaint, *In re Ascension Data & Analytics, LLC*, FTC File No. 1923126 (Dec. 22, 2021); [https://www.ftc.gov/system/files/documents/cases/1923126ascension\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/1923126ascension_complaint.pdf); Complaint, *In re Lightyear Dealer Tech., LLC*, FTC File No. 172 3051 (Sept. 6, 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3051\\_c-4687\\_dealerbuilt\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf); Complaint, *In re PayPal, Inc.*, FTC File No. 162-3102 (May 24, 2018), [https://www.ftc.gov/system/files/documents/cases/venmo\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/venmo_complaint.pdf).

through the use of advertising technology such as pixels, cookies, APIs, or SDKs.<sup>4</sup> The NPO outlines conduct that the Commission has determined to be in violation of Section 5 of the FTC Act, which includes using or disclosing consumers' confidential tax information without first obtaining affirmative express consent for unrelated purposes that the consumer did not request, for example: (1) to obtain a financial benefit that is separate from the benefit generated from providing the product or service requested; or (2) to advertise, sell, or promote products or services.<sup>5</sup> The notice also reinforced that it is a violation of Section 5 to make false, misleading, or deceptive representations concerning the use or confidentiality of such information.

Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>4</sup> Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf).

<sup>5</sup> Fed. Trade. Comm'n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.



FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053727 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 13, 2023

The Honorable Mike Levin  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Levin:

Thank you for your October 26, 2023, letter requesting that the Federal Trade Commission ("FTC" or "Commission") investigate potential breaches of taxpayer privacy by tax preparation companies. I appreciate your interest in this matter.

I can assure you that as the nation's consumer protection agency, the FTC shares your goal of vigorous enforcement against any company that engages in unlawful privacy practices that harm consumers. This is particularly the case when sensitive information, such as taxpayers' financial information, is at issue.

The FTC has previously taken action against tax preparation companies for, among other things, failing to adequately protect consumers' financial information. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer for failing to implement appropriate safeguards to protect consumers' tax preparation information.<sup>1</sup> The Commission alleged that this failure allowed hackers to gain full access to consumers' TaxSlayer accounts and use consumers' sensitive personal information to commit tax identity theft.<sup>2</sup> The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers' financial information.<sup>3</sup> The Commission also shares your interest in ensuring consumers are not faced with deceptive practices in the tax preparation process.

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<sup>2</sup> *Id.*

<sup>3</sup> See also Complaint, *In re Ascension Data & Analytics, LLC*, FTC File No. 1923126 (Dec. 22, 2021); [https://www.ftc.gov/system/files/documents/cases/1923126ascension\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/1923126ascension_complaint.pdf); Complaint, *In re Lightyear Dealer Tech., LLC*, FTC File No. 172 3051 (Sept. 6, 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3051\\_c-4687\\_dealerbuilt\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf); Complaint, *In re PayPal, Inc.*, FTC File No. 162-3102 (May 24, 2018), [https://www.ftc.gov/system/files/documents/cases/venmo\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/venmo_complaint.pdf).

through the use of advertising technology such as pixels, cookies, APIs, or SDKs.<sup>4</sup> The NPO outlines conduct that the Commission has determined to be in violation of Section 5 of the FTC Act, which includes using or disclosing consumers' confidential tax information without first obtaining affirmative express consent for unrelated purposes that the consumer did not request, for example: (1) to obtain a financial benefit that is separate from the benefit generated from providing the product or service requested; or (2) to advertise, sell, or promote products or services.<sup>5</sup> The notice also reinforced that it is a violation of Section 5 to make false, misleading, or deceptive representations concerning the use or confidentiality of such information.

Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>4</sup> Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf).

<sup>5</sup> Fed. Trade. Comm'n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053728 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 13, 2023

The Honorable Ilhan Omar  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Omar:

Thank you for your October 26, 2023, letter requesting that the Federal Trade Commission (“FTC” or “Commission”) investigate potential breaches of taxpayer privacy by tax preparation companies. I appreciate your interest in this matter.

I can assure you that as the nation’s consumer protection agency, the FTC shares your goal of vigorous enforcement against any company that engages in unlawful privacy practices that harm consumers. This is particularly the case when sensitive information, such as taxpayers’ financial information, is at issue.

The FTC has previously taken action against tax preparation companies for, among other things, failing to adequately protect consumers’ financial information. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer for failing to implement appropriate safeguards to protect consumers’ tax preparation information.<sup>1</sup> The Commission alleged that this failure allowed hackers to gain full access to consumers’ TaxSlayer accounts and use consumers’ sensitive personal information to commit tax identity theft.<sup>2</sup> The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers’ financial information.<sup>3</sup> The Commission also shares your interest in ensuring consumers are not faced with deceptive practices in the tax preparation process.

As referenced in your letter, the Commission further emphasized its commitment to holding tax preparation companies accountable by using its Notice of Penalty Offense (“NPO”) authority to warn five tax preparation companies that they could face potential civil penalties—up to \$50,120 per violation—if they use tax preparation information for advertising, including

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<sup>2</sup> *Id.*

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Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>4</sup> Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf).

<sup>5</sup> Fed. Trade. Comm'n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053729 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 13, 2023

The Honorable Katie Porter  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Porter:

Thank you for your October 26, 2023, letter requesting that the Federal Trade Commission (“FTC” or “Commission”) investigate potential breaches of taxpayer privacy by tax preparation companies. I appreciate your interest in this matter.

I can assure you that as the nation’s consumer protection agency, the FTC shares your goal of vigorous enforcement against any company that engages in unlawful privacy practices that harm consumers. This is particularly the case when sensitive information, such as taxpayers’ financial information, is at issue.

The FTC has previously taken action against tax preparation companies for, among other things, failing to adequately protect consumers’ financial information. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer for failing to implement appropriate safeguards to protect consumers’ tax preparation information.<sup>1</sup> The Commission alleged that this failure allowed hackers to gain full access to consumers’ TaxSlayer accounts and use consumers’ sensitive personal information to commit tax identity theft.<sup>2</sup> The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers’ financial information.<sup>3</sup> The Commission also shares your interest in ensuring consumers are not faced with deceptive practices in the tax preparation process.

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<sup>2</sup> *Id.*

<sup>3</sup> See also Complaint, *In re Ascension Data & Analytics, LLC*, FTC File No. 1923126 (Dec. 22, 2021); [https://www.ftc.gov/system/files/documents/cases/1923126ascension\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/1923126ascension_complaint.pdf); Complaint, *In re Lightyear Dealer Tech., LLC*, FTC File No. 172 3051 (Sept. 6, 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3051\\_c-4687\\_dealerbuilt\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf); Complaint, *In re PayPal, Inc.*, FTC File No. 162-3102 (May 24, 2018), [https://www.ftc.gov/system/files/documents/cases/venmo\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/venmo_complaint.pdf).

through the use of advertising technology such as pixels, cookies, APIs, or SDKs.<sup>4</sup> The NPO outlines conduct that the Commission has determined to be in violation of Section 5 of the FTC Act, which includes using or disclosing consumers' confidential tax information without first obtaining affirmative express consent for unrelated purposes that the consumer did not request, for example: (1) to obtain a financial benefit that is separate from the benefit generated from providing the product or service requested; or (2) to advertise, sell, or promote products or services.<sup>5</sup> The notice also reinforced that it is a violation of Section 5 to make false, misleading, or deceptive representations concerning the use or confidentiality of such information.

Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>4</sup> Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf).

<sup>5</sup> Fed. Trade. Comm'n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053730 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 13, 2023

The Honorable Andre Carson  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Carson:

Thank you for your October 26, 2023, letter requesting that the Federal Trade Commission (“FTC” or “Commission”) investigate potential breaches of taxpayer privacy by tax preparation companies. I appreciate your interest in this matter.

I can assure you that as the nation’s consumer protection agency, the FTC shares your goal of vigorous enforcement against any company that engages in unlawful privacy practices that harm consumers. This is particularly the case when sensitive information, such as taxpayers’ financial information, is at issue.

The FTC has previously taken action against tax preparation companies for, among other things, failing to adequately protect consumers’ financial information. For example, the Commission used its authority under the Gramm-Leach-Bliley Act to bring an action against TaxSlayer for failing to implement appropriate safeguards to protect consumers’ tax preparation information.<sup>1</sup> The Commission alleged that this failure allowed hackers to gain full access to consumers’ TaxSlayer accounts and use consumers’ sensitive personal information to commit tax identity theft.<sup>2</sup> The *TaxSlayer* matter illustrates how the Commission holds companies accountable for their treatment of consumers’ financial information.<sup>3</sup> The Commission also shares your interest in ensuring consumers are not faced with deceptive practices in the tax preparation process.

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<sup>2</sup> *Id.*

<sup>3</sup> See also Complaint, *In re Ascension Data & Analytics, LLC*, FTC File No. 1923126 (Dec. 22, 2021); [https://www.ftc.gov/system/files/documents/cases/1923126ascension\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/1923126ascension_complaint.pdf); Complaint, *In re Lightyear Dealer Tech., LLC*, FTC File No. 172 3051 (Sept. 6, 2019), [https://www.ftc.gov/system/files/documents/cases/172\\_3051\\_c-4687\\_dealerbuilt\\_final\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/172_3051_c-4687_dealerbuilt_final_complaint.pdf); Complaint, *In re PayPal, Inc.*, FTC File No. 162-3102 (May 24, 2018), [https://www.ftc.gov/system/files/documents/cases/venmo\\_complaint.pdf](https://www.ftc.gov/system/files/documents/cases/venmo_complaint.pdf).

through the use of advertising technology such as pixels, cookies, APIs, or SDKs.<sup>4</sup> The NPO outlines conduct that the Commission has determined to be in violation of Section 5 of the FTC Act, which includes using or disclosing consumers' confidential tax information without first obtaining affirmative express consent for unrelated purposes that the consumer did not request, for example: (1) to obtain a financial benefit that is separate from the benefit generated from providing the product or service requested; or (2) to advertise, sell, or promote products or services.<sup>5</sup> The notice also reinforced that it is a violation of Section 5 to make false, misleading, or deceptive representations concerning the use or confidentiality of such information.

Thank you for raising this important consumer protection issue with us. If you or your staff have additional questions on this matter or wish to share additional information with us, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



Lina M. Khan  
Chair, Federal Trade Commission

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<sup>4</sup> Ltr. from FTC Regarding Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts (Sept. 18, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter\\_0.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/NPO-Misuse-Information-Collected-Confidential-Contexts-Cover-Letter_0.pdf).

<sup>5</sup> Fed. Trade. Comm'n, *Notice of Penalty Offenses Concerning Misuse of Information Collected in Confidential Contexts*, FTC Enforcement (Sept. 18, 2023), <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-confidential-contexts>.



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053731 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 26, 2023

The Honorable Amy Klobuchar  
United States Senate  
Washington, DC 20510

Dear Senator Klobuchar:

Thank you for your inquiry regarding the Federal Trade Commission's ("FTC") efforts to protect Americans from the increasing threats posed by artificial intelligence ("AI")-enabled voice cloning technology. I share your concerns that Americans may be harmed by developments in this area of technology and I greatly appreciate your participation in the Commission's November public meeting to call attention to this issue.

First, you asked about steps the FTC is taking to: (1) educate the American people about voice cloning frauds, (2) prevent such frauds, and (3) enforce current laws to crack down on them.

The FTC is pursuing several steps to help protect Americans from AI voice cloning scams. As you may know, the FTC has been examining AI for several years. In 2020, the FTC held a public workshop on voice cloning technologies and their potential to harm consumers.<sup>1</sup> In 2022, the FTC issued a report to Congress warning of the dangers in relying too heavily on AI to combat online harms.<sup>2</sup> We also are pursuing a rulemaking to combat impersonation scams,<sup>3</sup> which can be supercharged by the use of voice cloning technology. Recently, the FTC has engaged in conversations with a variety of stakeholders, including academics, startups, and established tech companies, to learn more about the development of AI and what can be done to protect the American public.<sup>4</sup> The FTC has also published several alerts in both English and Spanish to warn consumers and market participants about potentially illegal uses of AI, including voice cloning.<sup>5</sup>

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<sup>1</sup> See Lesley Fair, *You Don't Say: FTC Workshop Listens In On Voice Cloning*, FTC Business Blog (Nov. 4, 2019), <https://www.ftc.gov/business-guidance/blog/2019/11/you-dont-say-ftc-workshop-listens-voice-cloning>.

<sup>2</sup> See Press Release, Fed. Trade Comm'n, *FTC Report Warns About Using Artificial Intelligence to Combat Online Problems*, (June 16, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-report-warns-about-using-artificial-intelligence-combat-online-problems>.

<sup>3</sup> See Press Release, Fed. Trade Comm'n, *FTC Proposes New Rule to Combat Government and Business Impersonation Scams* (Sept. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-proposes-new-rule-combat-government-business-impersonation-scams>.

<sup>4</sup> See, e.g., Press Release, Fed. Trade Comm'n, *FTC to Host Virtual Roundtable on AI and Content Creation* (Sept. 22, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-host-virtual-roundtable-ai-content-creation>.

<sup>5</sup> See, e.g., Alvaro Puig, *Scammers Use AI to Enhance Their Family Emergency Schemes*, FTC Consumer Alerts (Mar. 20, 2023), <https://consumer.ftc.gov/consumer-alerts/2023/03/scammers-use-ai-enhance-their-family->

Furthermore, to directly address concerns about voice cloning frauds, the FTC launched in November its exploratory Voice Cloning Challenge to promote the development of ideas to protect consumers from AI-enabled voice cloning fraud and other harms.<sup>6</sup> The Challenge is focused on fostering breakthrough ideas aimed at preventing, monitoring, mitigating, and evaluating the malicious use of voice cloning technology. Challenge submissions must address at least one of these areas of focus for intervention:

- Prevention or authentication: It must provide a way to limit the use or application of voice cloning software by unauthorized users;
- Real-time detection or monitoring: It must provide a way to detect cloned voices or the use of voice cloning technology; or
- Post-use evaluation: It must provide a way to check if an audio clip contains cloned voices.

The Challenge will offer a \$25,000 prize to the winner. Ideas generated through the Challenge may help combat the expected rise in fraudulent voice cloning, and also help the FTC's enforcement work by aiding in the detection of fraudulent calls. The Challenge is co-sponsored by the FTC's Bureau of Consumer Protection and Office of Technology. The FTC has sponsored similar challenges in the past which successfully spurred the development of tools to address consumer problems, including one in 2012 aimed at tackling robocalls and a 2017 challenge focused on addressing security vulnerabilities related to Internet of Things devices.<sup>7</sup>

Second, you asked what the FTC has learned about AI-enabled voice cloning fraud.

The FTC knows that scammers take advantage of a variety of AI tools to help them scam consumers. AI-assisted scams include: (1) family emergency scams, where the scammer clones the voice of a loved one to call a family member and ask for financial assistance; (2) romance scams, where the scammer uses a chatbot to write messages to fake a love interest; (3) business-related scams, where the scammers clone the voice of a high-ranking employee to call businesses and arrange wire transfers or obtain sensitive information; and (4) phishing scams, where the scammers use AI technology to quickly create detailed spam and phishing emails.

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emergency-schemes; Business Blog, Fed. Trade Comm'n, "Chatbots, deepfakes, and voice clones: AI deception for sale" (Mar. 20, 2023), <https://www.ftc.gov/business-guidance/blog/2023/03/chatbots-deepfakes-voice-clones-ai-deception-sale>; Michael Atleson, *Chatbots, Deepfakes, and Voice Clones: AI Deception for Sale*, FTC Business Blog (Oct. 2, 2023), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2023/10/consumers-are-voicing-concerns-about-ai>.

<sup>6</sup> See FTC Contests, *The FTC Voice Cloning Challenge* (Nov. 16, 2023), <https://www.ftc.gov/news-events/contests/ftc-voice-cloning-challenge>. The Challenge is being conducted pursuant to Section 105 of the America COMPETES Reauthorization Act of 2010, P.L. 111-358 (Jan. 4, 2011), codified as amended at 15 U.S.C. § 3719.

<sup>7</sup> See Press Release, Fed. Trade Comm'n, FTC Announces Robocall Challenge Winners (Apr. 2, 2023), <https://www.ftc.gov/news-events/news/press-releases/2013/04/ftc-announces-robocall-challenge-winners>; Press Release, Fed. Trade Comm'n, FTC Announces Winner of its Internet of Things Home Device Security Contest (July 26, 2017), <https://www.ftc.gov/news-events/news/press-releases/2017/07/ftc-announces-winner-its-internet-things-home-device-security-contest>. One of the winners of the 2012 challenge (first link above), Nomorobo, went on to become one of the first consumer call blocking services and reports having stopped more than 3 billion robocalls. See [nomorobo.com](http://nomorobo.com).



Unfortunately, it is already easy for bad actors to use AI technology to help perpetrate scams. For example, bad actors only need a short audio sample to create a nearly indistinguishable voice clone. Scammers also leverage the hype around AI technology to deceive people in evergreen scams, such as get-rich-quick schemes. In our recent case against Automators, the FTC alleged that defendants deceptively touted their services as backed by “AI machine learning.”<sup>8</sup> Across the FTC, we are focused on ways to ensure that AI technology is used and marketed in compliance with the laws we administer.

Third, you asked what resources the FTC is devoting to combat AI-enabled voice cloning fraud, and whether additional resources are necessary.

The FTC has devoted staff across the Agency and other resources, including prize money for the Voice Cloning Challenge, to educate Americans about voice cloning frauds, and to prevent such frauds. However, we are significantly outmatched and are in need of additional resources in order to ensure we can vigorously enforce the law and faithfully deliver on our statutory mandate. Additional resources would allow the FTC to hire more staff, increase our technical expertise, and bring more cases to protect Americans, including AI-enabled voice cloning fraud cases.

Finally, you asked whether current laws are sufficient to prevent AI-enabled voice cloning fraud and to punish the perpetrators of it, or whether additional authority is needed.

As you may know, in April 2021 the Supreme Court held that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law.<sup>9</sup> The federal court path now foreclosed had been used for forty years to make injured consumers whole and prevent wrongdoers from profiting from their unlawful conduct. The Commission’s loss of its ability to obtain monetary relief under 13(b) has already had a profound effect on consumers and honest businesses: by conservative estimates, this court decision has caused consumers to already lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day.<sup>10</sup> Depending on the facts, owing to *AMG* we may not be able to obtain monetary relief against scammers developing or using AI-enabled voice cloning to harm consumers. Additionally, FTC staff would be happy to explore with your staff additional authority that may be helpful to go after scammers using AI technology.

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<sup>8</sup> See Press Release, Fed. Trade Comm’n, FTC Action Stops Business Opportunity Scheme That Promised Its AI-Boosted Tools Would Power High Earnings Through Online Stores (Aug. 22, 2023), [ftc.gov/news-events/news/press-releases/2023/08/ftc-action-stops-business-opportunity-scheme-promised-its-ai-boosted-tools-would-power-high-earnings](https://www.ftc.gov/news-events/news/press-releases/2023/08/ftc-action-stops-business-opportunity-scheme-promised-its-ai-boosted-tools-would-power-high-earnings).

<sup>9</sup> *AMG Capital Mgmt., LLC v. FTC*, 593 U.S. \_\_\_, 141 S. Ct. 1341 (2021).

<sup>10</sup> Statement of Commissioner Rebecca Kelly Slaughter Joined by Chair Lina M. Khan Regarding Section 13(b) of the FTC Act (Apr. 28, 2022), [ftc.gov/system/files/ftc\\_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act\\_April%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Statement%20of%20Comm%27r%20Slaughter%20Joined%20by%20Chair%20Khan%20Regarding%20Section%2013%28b%29%20of%20the%20FTC%20Act_April%202022.pdf).

Thank you for your attention to this issue. If you or your staff have additional questions or comments, please contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair, Federal Trade Commission





Office of the Chair

December 26, 2023

The Honorable Susan M. Collins  
United States Senate  
Washington, DC 20510

Dear Senator Collins:

Thank you for your inquiry regarding the Federal Trade Commission's ("FTC") efforts to protect Americans from the increasing threats posed by artificial intelligence ("AI")-enabled voice cloning technology. I share your concerns that Americans may be harmed by developments in this area of technology and I greatly appreciate your participation in the Commission's November public meeting to call attention to this issue.

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Thank you for your attention to this issue. If you or your staff have additional questions or comments, please contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair, Federal Trade Commission

ANN McLANE KUSTER  
SECOND DISTRICT, NEW HAMPSHIRE

FOIA-2024-00414

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"UNCLASSIFIED"

2/15/2024

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184 MAIN STREET, SUITE 222  
NASHUA, NH 03060  
P: (603) 595-2006

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AND GRID SECURITY,  
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DEMOCRATIC STEERING AND POLICY  
COMMITTEE

## Congress of the United States House of Representatives

The Honorable Lina Khan  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

December 1, 2023

Dear Chair Khan:

In September, Kroger and Albertsons announced a robust divestiture plan in connection with their proposed merger. The divestiture partner in the transaction is C&S Wholesale Grocers, LLC (C&S). I am supportive of C&S's role in the transaction and believe that they will successfully operate the acquired businesses for many years to come.

C&S is headquartered in Keene, New Hampshire and employs more than 14,000 people. C&S has been a leader in the business community in my state for many years, and I know firsthand the company's commitment to the communities it serves. C&S has been an innovator in the grocery distribution business since 1918 and has operated in the retail grocery sector for many years. C&S has also been an excellent employer to workers in New Hampshire and elsewhere.

C&S's leadership has explained to me that further expansion into retail grocery stores is vital to the company's long-term success. Under the current plan, C&S will acquire several hundred stores, eight distribution centers, regional offices, four retail banners (including the exclusive use of the Albertsons banner in four states) and five private label store brands across seventeen states and the District of Columbia. C&S has also informed me that every one of the acquired stores will remain open (including the pharmacies); that every current employee in those stores will keep their job with the same or better pay and benefits; and that C&S will step into all current collective bargaining agreements, which include industry-leading healthcare and pension benefits and strong wages.

I know C&S's reputation for sound business plans, great product selection, value, and customer service. C&S has made the investments and conducted the diligence necessary to make this transaction a success, and has secured the capital needed to execute on its vision for a national retail grocery business. This is not a private equity deal where the focus is solely on short-term profits. C&S is in this for the long haul.

Thank you,

A handwritten signature in black ink that reads "Ann McLane Kuster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Ann McLane Kuster  
Member of Congress





FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053734 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Ann McLane Kuster  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Kuster:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

Handwritten signature of Lina M. Khan in cursive script.

Lina M. Khan  
Chair  
Federal Trade Commission

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

<sup>2</sup> Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf).



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UNITED STATES OF AMERICA  
00000053735 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Brian Fitzpatrick  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Fitzpatrick:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission

cc: The Honorable Josh Gottheimer



FOIA-2024-00414

UNITED STATES OF AMERICA  
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Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Josh Gottheimer  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Gottheimer:

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

<sup>2</sup> Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf).

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission

cc: The Honorable Brian Fitzpatrick

# Congress of the United States

Washington, DC 20515

December 8, 2023

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan:

As Co-Chairs of the House Problem Solvers Caucus, we are writing to offer the Federal Trade Commission (“FTC”) additional details and information about the changing competitive landscape in the retail grocery industry. The FTC should consider this grocery market landscape when evaluating the merits of the Kroger-Albertsons merger.

Supermarket grocers focused on fresh fruits and vegetables, milk and dairy products, canned goods, and household staples have seen their market share steadily decline for more than twenty years. National / discount grocers—supercenters, warehouse clubs, limited-assortment discount grocery stores, dollar stores, drug stores and online grocers—have usurped market share from supermarket grocers by relying on a combination of lower prices, lower non-union wages, national—as opposed to local or regional—suppliers, and the sheer size of their omnichannel retail presence. While twenty years ago, ten of the top fifteen U.S. grocers were supermarket grocers, today, ten of the top fifteen are national / discount grocers,<sup>1</sup> which now have ~63 percent national grocery market share, driven mainly by the significant share increases by Walmart, Costco, Amazon, Target/Shipt, Dollar General, Aldi / Trader Joe’s (owned by the same German family) and Lidl (also from Germany).

The rise of national / discount grocers has dramatically changed Americans’ shopping habits. Today, 62 percent of Americans buy their groceries primarily from a national / discount grocer. Comparatively, supermarket grocers are the primary store for just 38 percent of shoppers. Those numbers represent a dramatic reversal from the market in 2003, when Supermarket Grocers were the primary store for 79 percent of shoppers and just 21 percent shopped at National / Discount Grocers.

National / discount grocers also account for far more grocery sales than supermarket grocers. Among the top fifteen U.S. grocers, from 2003 to 2023, non-traditional grocery retailers added \$511 billion in sales, comprising 389 percent growth, 3.5 times the sales increase experienced by Supermarkets in that time. These national / discount grocers also added exponentially more stores than traditional grocers over the twenty-year span: 38,951 units compared to just 402 more

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<sup>1</sup> National / Discount Grocers include Walmart/Sam’s Club, Costco, Amazon/Whole Foods, Target/Shipt, Dollar General, CVS, Aldi, Lidl, Dollar Tree/Family Dollar, Walgreens, Trader Joe’s and Grocery Outlet.



Supermarket Grocers, or ninety-seven times more. As a result, unionized grocers' share of grocery jobs has fallen from 50 percent to 15 percent in the past twenty years.

The grocery industry has also seen explosive expansion of dollar grocers. Dollar stores are now the fastest-growing grocers in the U.S. More than a third of all stores in the United States that opened in 2021 and 2022 were dollar stores, and Dollar General alone opened 2,060 of them. Dollar General and Dollar Tree/Family Dollar together have a \$50 billion grocery business with more than 36,000 stores, having added 23,000 stores since 2003 (relative to under 26,000 supermarket grocery stores left in the U.S.).

This trend could have serious implications. Studies have shown that these dollar chains “use predatory tactics to drive local grocery stores and other retailers out of business”<sup>2</sup> and they are gouging consumers, “Dollar General is routinely overcharging...consumers for everyday staples and the necessities of life.”<sup>3</sup>

National / Discount Grocers are also leading in online sales, with much higher market penetration than supermarkets. Online grocery sales quadrupled between 2018 and 2022 and are expected to surpass 20 percent of all retail grocery sales by 2026. These changes were already in motion before COVID-19, but the pandemic vastly accelerated the transition to online. Before COVID, 63 percent bought most grocery staples at physical stores; today it's 44 percent. Similarly, the share of shoppers who purchased no groceries from physical grocery stores has surged from 2 percent to 37 percent.<sup>4</sup>

Given this dramatic transformation in the grocery industry competitive landscape, analyzing all of the grocery market — including national / discount grocers — offers the best foundation for an accurate assessment of how the proposed merger of Kroger and Albertsons might affect wages, prices and competition. Failing to consider national / discount grocers as a part of the market analysis would overlook most of the largest and dynamic competitors facing supermarket grocers

There is no *national* supermarket grocer in the U.S. today. Without this merger, low-wage, non-union national / discount grocers retailers will add to their dominance in the grocery sector and produce a more fragile and less resilient market for food. Consumers are likely to continue to see unrestricted growth in dollar stores, especially in rural and marginalized communities. Local producers could see their access to consumers and the local retail food market blocked by large, dominant players with a national footprint. Workers would suffer too — the national / discount grocers almost uniformly shun unions, pay lower wages, and offer fewer employee benefits than supermarket grocers.<sup>5</sup>

The FTC can best protect consumers and producers by acknowledging the entire landscape of the present-day grocery market. Taking account of the sweeping changes in how Americans buy their

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<sup>2</sup> Bill Wilson, *As Dollar Trees Increases Prices, Study Throws Shade on Strategies*, SUPERMARKET NEWS (Mar. 6, 2023), <https://www.supermarketnews.com/retail-financial/dollar-tree-increases-prices-study-throws-shade-strategies>.

<sup>3</sup> Marian Zboraj, *Dollar General Accused of Deceptive Pricing*, PROGRESSIVE GROCER (Sept. 15, 2023), <https://progressivegrocer.com/dollar-general-accused-deceptive-pricing>.

<sup>4</sup> *Changes in Grocery Shopping Habits and Perceptions*, PYMNTS (February 2023), at 6, <https://www.pymnts.com/study/grocery-shopping-habits-perception-online-store-digital-ordering/>.

<sup>5</sup> Michael Corkery, *Dollar General Is Deemed a 'Severe Violator' by the Labor Department*, N.Y. TIMES (Mar. 28, 2023), <https://www.nytimes.com/2023/03/28/business/dollar-general-osha-fines.html>.

groceries would be based on sound empirical evidence. This represents precisely the type of data the FTC should use to distinguish transactions that warrant deeper investigation from those that do not. The Commission has historically defined the grocery retail market as being comprised of those retail stores that “enable consumers to purchase all of their weekly food and grocery requirements during a single shopping visit.” This is plainly out of touch with how consumers buy their groceries today. American consumers regularly shop at four grocery types and five grocery banners.<sup>6</sup> The antiquated historical definition excludes warehouse clubs and dollar stores, notwithstanding that fact that Costco is America’s number three grocer, and its average store has three times the grocery sales of an exceptional Supermarket Grocery store, and five times the average supermarket. The antiquated historical definition does not account for online retail and delivery, and it ignores the way the COVID-19 pandemic accelerated the pace of change. For example, analysts have identified grocery as the category that saw the single biggest shift in shopping habits during and after the pandemic: large numbers of consumers who had never purchased groceries online, now make online shopping a regular habit.<sup>7</sup> Taken together, a wealth of evidence now demonstrates the assumptions and conclusions that feed into the Commission’s historical definition of the grocery market do not reflect contemporary consumer behaviors, novel competitive rivalries, or newly dominant digital technologies.

In the wake of Amazon’s acquisition of Whole Foods, you presciently noted in your *New York Times* Op-Ed in June 2017 that, “Buying Whole Foods will enable Amazon to leverage and amplify the extraordinary power it enjoys in online markets and delivery, making an even greater share of commerce part of its fief...By bundling services and integrating grocery stores into its logistics network, the company will be able to shut out or disfavor rival grocers.”<sup>8</sup> You clearly recognized that Amazon is a grocer; you were indisputably correct in noting that fact, and now Amazon is likely to be America’s number four grocer by year end.

You have rightly called on the FTC to “broaden its institutional skillsets to ensure *we are fully grasping market realities*, especially as the economy becomes increasingly digitized.”<sup>9</sup> When it comes to the grocery retail market, accounting for the rapid rise of national / discount grocers and online grocery will help ensure the Commission’s analysis “reflect[s] the realities of how firms do business in the modern economy.”<sup>10</sup> Otherwise, you ironically would be advancing the very (non-union) national / discount grocery behemoths you have stated your desire to rein in. That might not be your intention, but it undeniably would be the result, to the detriment of grocery consumers and workers across America.

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<sup>6</sup> *U.S. Grocery Shopper Trends 2023*, FMI, <https://www.fmi.org/our-research/research-reports/u-s-grocery-shopper-trends>.

<sup>7</sup> Joan Verdon, *The Pandemic Changed How We Shop for Groceries, Adobe Report Shows*, FORBES (Mar. 15, 2022), <https://www.forbes.com/sites/joanverdon/2022/03/15/the-pandemic-changed-how-we-shop-for-groceries-adobe-report-shows/?sh=6e837c384bb1>.

<sup>8</sup> Lina M. Khan, *Amazon Bites Off Even More Monopoly Power*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/2017/06/21/opinion/amazon-whole-foods-jeff-bezos.html>.

<sup>9</sup> Lina M. Khan, Chair, FED. TRADE COMM’N, *Memorandum to Commission Staff and Commissioners Regarding Vision and Priorities for the FTC*, (Sept. 22, 2021), [https://www.ftc.gov/system/files/documents/public\\_statements/1596664/agency\\_priorities\\_memo\\_from\\_chair\\_lina\\_m\\_khan\\_9-22-21.pdf](https://www.ftc.gov/system/files/documents/public_statements/1596664/agency_priorities_memo_from_chair_lina_m_khan_9-22-21.pdf).

<sup>10</sup> FED. TRADE COMM’N, *FTC and DOJ Seek Comment on Draft Merger Guidelines*, (July 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-doj-seek-comment-draft-merger-guidelines>.

Sincerely,



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Brian Fitzpatrick  
MEMBER OF CONGRESS



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Josh Gottheimer  
MEMBER OF CONGRESS

WASHINGTON, DC 20510

December 8, 2023

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

The Honorable Jonathan Kanter  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Chair Khan and Assistant Attorney General Kanter:

We are writing regarding our concerns about reports of an imminent merger between health care giants Cigna and Humana.<sup>1</sup> Valued at more than \$60 billion,<sup>2</sup> this would be the “biggest deal of the year”<sup>3</sup> and would be the latest example of massive health care conglomerates using anticompetitive mergers to increase their market dominance and reduce competition. We urge DOJ and FTC to closely scrutinize the impact of this deal if it moves forward, and reject it if your agencies find that it will reduce competition, drive up health care prices, or hurt patients.

The U.S. health insurance market is dominated by a few massive conglomerates,<sup>4</sup> following extensive market consolidation by companies that have “bulk[ed] up at the expense of patients and taxpayers.”<sup>5</sup> A merger between Cigna and Humana, two of the nation’s largest health insurers,<sup>6</sup> will make matters even worse:

The national insurance landscape [is] dominated by six major plans. ... A Cigna-Humana merger would [] consolidate our national players down to five.....This deal would naturally lead to speculation and anticipation about potential future deals as large corporate players Walmart, Amazon, and Walgreens look to grow and compete in the healthcare market.... A merger between Cigna and Humana could ultimately be anticompetitive for smaller players — but it could also be a catalyst for further consolidation. In most cases, consolidation does not equal better prices or more options.<sup>7</sup>

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<sup>1</sup> Reuters, “US health insurers Humana, Cigna in talks to merge -source,” Anirban Sen and Deena Beasley, November 29, 2023, <https://www.reuters.com/markets/deals/us-health-insurers-humana-cigna-talks-merge-wsj-2023-11-29/>.

<sup>2</sup> Healthcare Finance News, “Insurers Cigna and Humana reportedly in talks to merge,” Jeff Lagasse, November 30, 2023, <https://www.healthcarefinancenews.com/news/insurers-cigna-and-humana-reportedly-talks-merge>.

<sup>3</sup> Wall Street Journal, “Cigna, Humana in Talks for Blockbuster Merger,” Lauren Thomas, Anna Wilde Mathews, and Laura Cooper, November 29, 2023, <https://www.wsj.com/business/deals/cigna-humana-in-talks-for-blockbuster-merger-c5c7f1b0>.

<sup>4</sup> The Advisory Board, “A Cigna + Humana merger may be on the horizon. Here’s our take,” Jared Landis, Vidal Seegobin, Mallory Kirby, Sally Kim, and Max Hakanson, November 30, 2023, <https://www.advisory.com/daily-briefing/2023/11/30/cigna-humana-ec>.

<sup>5</sup> Axios, “A rumored merger would create yet another care titan,” Caitlin Owens, November 30, 2023, <https://www.axios.com/2023/12/01/cigna-humana-merger-health-costs-cvs>.

<sup>6</sup> Business Insider, “Why a giant health insurer merger is probably destined to fail,” Shelby Livingston, November 30, 2023, <https://www.businessinsider.com/cigna-humana-merger-antitrust-scrutiny-2023-11>.

<sup>7</sup> The Advisory Board, “Daily Briefing, A Cigna + Humana merger may be on the horizon. Here’s our take,” Jared Landis, Vidal Seegobin, Mallory Kirby, Sally Kim, and Max Hakanson, November 30, 2023, <https://www.advisory.com/daily-briefing/2023/11/30/cigna-humana-ec>.

A particular concern for the potential merger is that Cigna and Humana also own ExpressScripts and Humana Pharmacy Solutions, the nation's second and fourth largest pharmacy benefit managers (PBMs).<sup>8</sup> Four PBMs – ExpressScripts, Humana Pharmacy Solutions, OptumRx, and CVS Caremark, each owned by or affiliated with an insurance company – control 87 percent of the U.S. PBM market.<sup>9</sup> Post-merger, the new Cigna-Humana PBM would control an entire third of the market.<sup>10</sup> And because Cigna and Humana also own their own pharmacies, they are incentivized to drive up drug prices rather than negotiate them down, because vertically integrated PBMs “profit from the higher prices [in their own pharmacies].”<sup>11</sup> The merged company would have an incentive to wield its PBM market power to steer patients to their own vertically integrated pharmacies where they may set higher prices, hurting patients and driving up costs for taxpayers and independent pharmacies.<sup>12</sup>

The risks of this merger are clear and profound. As one expert noted, “[w]hen you have anti-competitive markets, it not only increases prices, but it severely decreases the pressure to improve the product... When that product is a health insurance plan... if you don't have the threat of losing customers to another firm, the quality issue becomes really important.”<sup>13</sup>

We are encouraged by DOJ and FTC's efforts to tackle consolidation, including through challenges to anticompetitive deals.<sup>14</sup> In line with these efforts, the agencies should be prepared to carefully scrutinize a Cigna-Humana deal and block it if it is deemed to violate antitrust laws.

Sincerely,

  
Elizabeth Warren  
United States Senator

  
Mike Braun  
United States Senator

<sup>8</sup> Wall Street Journal, “Cigna-Humana Merger Is Likely to Face Antitrust Challenge,” David Wainer, November 30, 2023, <https://www.wsj.com/business/cigna-humana-merger-is-likely-to-face-antitrust-challenge-498636bc>; Becker's Hospital Review, “The top insurers all have PBMs, here's who they are,” Alia Paavola, April 10<sup>th</sup>, 2019, <https://www.beckershospitalreview.com/pharmacy/the-top-insurers-all-have-pbms-here-s-who-they-are.html>.

<sup>9</sup> Becker's Hospital Review, “Top PBMs by 2022 market share,” Paige Twenter, May 23, 2023, <https://www.beckershospitalreview.com/pharmacy/top-pbms-by-2022-market-share.html>.

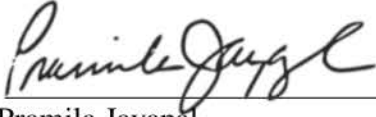
<sup>10</sup> Axios, “A rumored merger would create yet another health care titan,” Caitlin Owens, December 1, 2023, <https://www.axios.com/2023/12/01/cigna-humana-merger-health-costs-cvs>.

<sup>11</sup> Wall Street Journal, “Generic Drugs Should Be Cheap, but Insurers Are Charging Thousands of Dollars for Them,” Joseph Walker, September 11, 2023, <https://www.wsj.com/health/healthcare/generic-drugs-should-be-cheap-but-insurers-are-charging-thousands-of-dollars-for-them-ef13d055>.

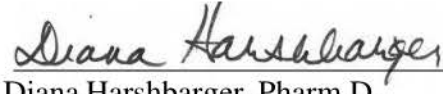
<sup>12</sup> *Id.*

<sup>13</sup> Axios, “A rumored merger would create yet another health care titan,” Caitlin Owens, December 1, 2023, <https://www.axios.com/2023/12/01/cigna-humana-merger-health-costs-cvs>.

<sup>14</sup> See, e.g., U.S. Federal Trade Commission, “FTC Sues to Block Biopharmaceutical Giant Amgen from Acquisition That Would Entrench Monopoly Drugs Used to Treat Two Serious Illnesses,” press release, May 16, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-sues-block-biopharmaceutical-giant-amgen-acquisition-would-entrench-monopoly-drugs-used-treat>; U.S. Department of Justice, “Justice Department Sues to Block JetBlue's Proposed Acquisition of Spirit,” press release, March 7, 2023, <https://www.justice.gov/opa/pr/justice-department-sues-block-jetblue-s-proposed-acquisition-spirit>.



Pramila Jayapal  
Member of Congress



Diana Harshbarger, Pharm.D.  
Member of Congress



December 11, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan,

As consumers prepare to purchase prepaid gift cards for their friends and family this holiday season, I strongly urge the Federal Trade Commission (Commission) to investigate the practices of Incomm Financial Services (Incomm), a payments technology company whose negligent failure to properly secure its Vanilla gift cards have left consumers susceptible to monetary theft. It is critical that the Commission protect consumers against fraud and significant financial loss by holding Incomm accountable for their unfair and deceptive business practices.

A recent lawsuit filed by the San Francisco City Attorney's Office (SFCAO) reveals that Incomm failed to secure the packaging of their popular Vanilla gift cards, allowing anyone to obtain a card's information from beneath its cardboard sleeve.<sup>1</sup> As a result, bad actors targeted consumers through "card draining," a practice in which an individual obtains card information without leaving signs of tampering. Once consumers purchase and activate these gift cards at a retail store, fraudsters then empty the card of all funds.

Incomm has been aware of this problem for a decade but took no action to improve the packaging design of their cards or to swiftly reimburse victims of card draining.<sup>2</sup> By contrast, Incomm's competitors have taken simple and cost-effective measures to protect their gift cards against fraud, such as through tamper proof packaging. Further, Incomm frequently failed to quickly remediate fraud and reimburse consumers for their losses as a result of their negligent failure to adequately protect their Vanilla card. Consumers across the United States, including Connecticut residents, have been victims of this fraudulent action.

In the past, the Commission has brought enforcement actions and civil suits against financial institutions that have turned a blind eye to consumer fraud, citing violations of the FTC Act among other statutes. For instance, in January 2017, the Commission charged Western Union with failing to implement an anti-fraud policy for their money transfer system, in some

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<sup>1</sup> <https://www.sfcityattorney.org/wp-content/uploads/2023/11/2023-11-09-Complaint.pdf>

<sup>2</sup> <https://law.yale.edu/yls-today/news/sfalp-files-suit-gift-card-scamming-case>

cases even facilitating those acts of fraud.<sup>3</sup> More recently in June 2022, the Commission sued Walmart for failing to secure its money transfer system and allowing bad actors to scam consumers out of hundreds of millions of dollars.<sup>4</sup> These examples are no different than the practices of Incomm, whose neglect and refusal to implement improved security features have unjustly harmed consumers.

These instances of card draining will likely continue unless Incomm enhances the security features of their prepaid gift cards. As the SFCAO complaint demonstrates, this fraud has impacted Americans across the country, calling for complementary action from the Commission to ensure vigorous enforcement of our consumer protection laws at a state and federal level. I therefore urge your agency to coordinate and support the efforts of SFCAO, and to work with them investigate the business practices of Incomm leading to this widespread fraud. It is time we put an end to this practice and offer justice to the consumers who have been harmed as a result.

Sincerely,



RICHARD BLUMENTHAL

United States Senate

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<sup>3</sup> <https://www.ftc.gov/news-events/news/press-releases/2017/01/western-union-admits-anti-money-laundering-violations-settles-consumer-fraud-charges-forfeits-586>

<sup>4</sup> <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-walmart-facilitating-money-transfer-fraud-fleeced-customers-out-hundreds-millions>



FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053744 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 26, 2023

The Honorable Richard Blumenthal  
United States Senate  
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your letter regarding Incomm Financial Services (Incomm) and Vanilla gift cards. You expressed concerns regarding Incomm's packaging of its Vanilla gift cards and described that the gift card packaging allows scammers to obtain card information without leaving signs of tampering, allowing them to drain gift cards after consumers purchase and activate the gift cards. You noted that the San Francisco City Attorney's Office recently filed a lawsuit regarding these issues. Your letter asks the Commission to open an investigation to investigate Incomm jointly with the San Francisco City Attorney's Office.

I share your concern about fraud involving gift cards. We know from consumer complaints entered into our Consumer Sentinel Database that such fraud is prolific.<sup>1</sup> In the first nine months of this year, more than 31,000 consumers reporting losing over \$160 million to scammers using gift cards.<sup>2</sup> It is a particular concern for older adults who, in 2022, reported paying scammers \$126 million using gift cards.<sup>3</sup> The Commission utilizes a multi-prong approach that includes law enforcement efforts, as well as collaborating with a diverse array of partners to help inform strategic policy initiatives that aim to mitigate the impact of fraud related to gift cards. For example, the Commission has created a variety of public awareness materials to help consumers spot and report gift card scams, and reminding consumers: Gift cards are for gifts, not payments.<sup>4</sup> The FTC also recommends that consumers inspect gift cards carefully before purchase to make sure that packaging is intact and that the PIN number on the back isn't showing.<sup>5</sup> Additionally, as part of the FTC's work to implement the mandates of the 2022 Stop Senior Scams Act, the FTC has worked closely with stakeholders across government, industry, and consumer advocacy groups.<sup>6</sup>

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<sup>1</sup> Consumer Sentinel is a database that includes reports submitted directly to the FTC by consumers, as well as to reports shared by data contributors. See FTC, *Consumer Sentinel Network*, <https://www.ftc.gov/enforcement/consumer-sentinel-network>.

<sup>2</sup> See FTC *Consumer Sentinel Network*, <https://public.tableau.com/profile/federal.trade.commission>.

<sup>3</sup> FTC, *Protecting Older Consumers 2022-2023: A Report of the Federal Trade Commission* 34 (2023) [hereinafter "Older Adults Report"], [https://www.ftc.gov/system/files/ftc\\_gov/pdf/p144400olderadultsreportoct2023.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/p144400olderadultsreportoct2023.pdf).

<sup>4</sup> See, e.g., FTC, *Report Gift Cards Used in a Scam*, <https://www.ftc.gov/media/70967>.

<sup>5</sup> See, e.g., FTC, *Avoiding and Reporting Gift Card Scams*, <https://consumer.ftc.gov/articles/avoiding-and-reporting-gift-card-scams>.

<sup>6</sup> Older Adults Report at 42-45.

Thank you for raising this important consumer protection issue with us. If you or your staff has additional questions or comments, please contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair, Federal Trade Commission

December 12, 2023

Lina M. Khan, Chair  
Rebecca Kelly Slaughter, Commissioner  
Alvaro Bedoya, Commissioner  
Federal Trade Commission (FTC)  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Dear Chair Khan, Commissioner Slaughter, Commissioner Bedoya:

We write to urge the Federal Trade Commission (FTC) to carefully scrutinize the proposed merger involving the Kroger Corporation (Kroger) and Albertsons, which are the largest and second-largest supermarket chains in the United States respectively. This proposal is the culmination of a decades-long consolidation trend, led by these two companies, that has eliminated neighborhood stores, leading to higher prices, while also creating pharmacy and food deserts in vulnerable communities. As the two companies have bought out their competitors, they have accrued increased market power – negatively affecting labor markets.

Past mergers have left some regions with just a single major employer, who, holding monopsony power, can impose lower wages and benefits than the unions achieve in regions where there are several employers that the union negotiators can negotiate with. According to United Food and Commercial Workers (UFCW) union reports, in regions where Kroger has no major competition, it has resorted to numerous unfair labor practices to impede unionization. We understand that today, Kroger has been held in contempt for failure to abide by adjudicated remedies for its past unfair practices—practices that persist today. Across the country, this merger would sharply reduce labor’s ability to effectively represent workers.

We are also deeply concerned about the Kroger and Albertsons announcement on September 8 that they have entered into a \$1.9 billion agreement with C&S Wholesale Grocers (C&S) to sell 413 stores and eight distribution centers across the country, as part of a bid to satisfy regulators reviewing the \$24.6 billion proposed mega-merger. Historically, divestiture plans have been harmful. UFCW reports the proposed divestitures will implicate the following Locals:

- California - 66 Albertsons and Kroger stores to be divested. UFCW Locals 5, 324, 770, and 1442 all represent workers at Albertsons and/or Kroger stores in California, and these unions represent the majority of Kroger and Albertsons stores in the state and therefore their members at the stores to be divested will be directly impacted. Local 324, 770 and 1442 are part of a Southern California bargaining unit including other UFCW locals.

- Washington - 104 Albertsons and Kroger stores to be divested. The vast majority of these stores employ workers represented by UFCW Local 3000 or another UFCW Local.
- Colorado - 52 Albertsons stores to be divested. UFCW Local 7 represents almost all workers of these stores.
- Oregon - 49 Albertsons and Kroger stores to be divested. Some of these stores employ workers represented by UFCW Local 3000 or another UFCW Local.
- New Mexico - 12 Albertsons stores to be divested. All of these stores employ workers represented by UFCW Local 1564.
- Montana/Utah/Wyoming - 12 Albertsons stores to be divested. Some of these stores have workers represented by UFCW Local 7.

UFCW data indicates that C&S does not have the capability to operate grocery markets well enough to be a strong competitor in a post-merger Kroger market. It has functioned as a wholesale supplier to other grocery chains for nearly its entire existence, operating only a handful of retail stores. Thus, C&S has been operating a small chain, split into two regions hundreds of miles apart, in which the majority of its stores were run by franchisees, not it. It now proposes to take on 413 stores, increasing their size by a factor of eight overnight, largely in areas where it has no retail experience. The majority of the divested stores are located on the West Coast, while C&S has only three distribution centers west of the Rockies and none in the Mountain states.

Furthermore, there is good reason to doubt that the spun-off properties are intended to remain in the grocery business. The \$1.9 billion deal price is approximately half a billion dollars less than the value of just the real estate on which the stores sit – and the UFCW Locals fear that the structure of the deal could be modeled on the 2015 divestiture to Haggen, with one company set up to operate the stores and a second, bankruptcy-remote firm set up to hold the real estate, suggesting that this could be a real-estate play and not meant to ensure the viability of a grocery chain. This merger, if allowed, will strand countless consumers without local markets and workers without jobs. Therefore, it is critical that the FTC enforce the law when it comes to Kroger's intention to acquire Albertsons.

Lastly, this divestiture plan is silent on a number of elements that are critical to any new market entrant's survival. To provide more transparency on this proposal, we request that the Federal Trade Commission provide us with the following information:

- What is C&S' plan to continue operating pharmacies in the stores they acquire? Do they have adequate leverage within a concentrated pharmacy benefit management industry?
- Will Kroger and C&S make the 413 store locations public so local communities can have advance notice of any changes to their food source? C&S has indicated they will purchase up to 237 more stores – will they provide the locations of those stores?



- Has C&S contacted the local union representing the workers in those 413 stores?  
How does C&S intend to distribute assets between the two corporate entities it has set up? Will C&S be granted access to customer loyalty data and distribution networks?

Thank you for your full and fair consideration of this request, consistent with applicable agency guidelines. We are hopeful for a response by January 11, 2024.

Sincerely,



Barbara Lee  
Member of Congress



Pramila Jayapal  
Member of Congress



Henry C. "Hank" Johnson, Jr.  
Member of Congress



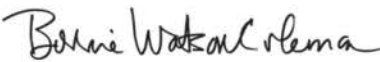
Greg Casar  
Member of Congress



André Carson  
Member of Congress



Katie Porter  
Member of Congress



Bonnie Watson Coleman  
Member of Congress



Summer Lee  
Member of Congress



Alexandria Ocasio-Cortez  
Member of Congress



Rashida Tlaib  
Member of Congress



Jan Schakowsky  
Member of Congress



Mark Pocan  
Member of Congress



Alma S. Adams, Ph.D.  
Member of Congress



Adam B. Schiff  
Member of Congress



Chris Deluzio  
Member of Congress



Danny K. Davis  
Member of Congress



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053746 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Alma S. Adams, Ph.D.  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Adams:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

---

<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

<sup>2</sup> Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf).

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053747 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Barbara Lee  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Lee:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053748 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Andre Carson  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Carson:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053749 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Greg Casar  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Casar:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053750 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Bonnie Watson Coleman  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Coleman:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053751 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Danny K. Davis  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Davis:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053752 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Chris Deluzio  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Deluzio:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053753 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Pramila Jayapal  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Jayapal:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053754 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Henry C. "Hank" Johnson, Jr.  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Johnson:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053755 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Alexandria Ocasio-Cortez  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Ocasio-Cortez:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

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Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053756 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Mark Pocan  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Pocan:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053757 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Katie Porter  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Porter:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

<sup>2</sup> Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf).

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053758 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Jan Schakowsky  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Schakowsky:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

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Sincerely,

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Lina M. Khan  
Chair  
Federal Trade Commission





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053759 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Adam B. Schiff  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Schiff:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Sincerely,

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Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053760 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Summer Lee  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Lee:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Sincerely,

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Lina M. Khan  
Chair  
Federal Trade Commission



FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053761 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Rashida Tlaib  
United States House of Representatives  
Washington, D.C. 20515

Dear Representative Tlaib:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

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Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

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Lina M. Khan  
Chair  
Federal Trade Commission

## United States Senate

WASHINGTON, DC 20510

<https://www.fetterman.senate.gov>

December 13, 2023

The Honorable Merrick Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, D.C. 20580

Dear Attorney General Garland and Chair Khan:

I write regarding the Department of Justice (DOJ) and Federal Trade Commission's (FTC) draft merger guidelines as applied to the University of Pittsburgh Medical Center's (UPMC) pending acquisition of Washington Health System (WHS). I was encouraged by the public release of the joint merger guidelines, which are necessary to tackle the consolidation and monopolization that harms families and consumers in Pennsylvania and across the country. I urge DOJ and FTC to apply these new guidelines as soon as possible to carefully determine whether the UPMC-WHS deal might restrict access to critical health care in a highly consolidated market.

WHS provides integrated health care services at two small, rural hospitals, while UPMC has grown to be the largest private-sector employer in Pennsylvania, operating 40 hospitals and more than 800 outpatient facilities.<sup>1</sup> Between 1996 and 2019, UPMC undertook 28 acquisitions, extending its outsize influence over the health care services market and unique power over the labor market.<sup>2</sup> This has had a dramatic impact on market competition and workers. To date, UPMC has acquired and then closed 4 hospitals in Pennsylvania, in addition to acquiring and downsizing 3 other hospitals in Pennsylvania, resulting in the elimination of at least 353 beds, 1,367 full-time jobs, and 433 part-time jobs.<sup>3</sup>

The viability of smaller, independent hospitals in rural Pennsylvania has been greatly impeded by behemoth health care systems like UPMC. In addition to the geographic spread and related travel burdens on rural communities, large health care systems squeeze out smaller hospitals by undercutting them on prices that smaller health care systems cannot afford to match. Then, when in a dominant position, large health care systems cut worker pay and benefits while increasing prices for patients.

I am concerned that the successful acquisition of WHS by UPMC will further slash availability of affordable health care services for my constituents. The evidence is clear: hospitals with fewer competitors charge significantly higher prices. As economist Martin Gaynor testified before Congress in May 2021, hospitals without a competitor charge on average 12 percent higher than

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<sup>1</sup> [https://thesoc.org/wp-content/uploads/2023/05/COMPLAINT\\_5.17\\_redacted.pdf](https://thesoc.org/wp-content/uploads/2023/05/COMPLAINT_5.17_redacted.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## United States Senate

WASHINGTON, DC 20510

<https://www.fetterman.senate.gov>

a hospital with three or more competitors nearby.<sup>4</sup> I am also concerned that this acquisition will exacerbate provider burnout. As acquisitions often result in downsizing of services or facility closures, rural providers may experience increased patient volume that is unsustainable. This will also aggravate the already unacceptably high wait times for patients in rural communities.

These concerns are founded in UPMC's past pattern and practice. On May 18, 2023, Service Employees International Union (SEIU) Healthcare Pennsylvania and the Strategic Organizing Center filed an antitrust complaint with DOJ alleging UPMC's attempted and actual monopolization and monopsonization of the health care market.<sup>5</sup> This complaint is based on UPMC's noted track record of acquiring and subsequently downsizing or closing rural hospitals, violations of labor law and protections, and growing market dominance that has suppressed wages, reduced patient quality of care, and jacked up costs for patients.<sup>6</sup> Specifically, UPMC has reduced staffing while increasing workloads and patient volume, locked in sub-competitive pay and working conditions through non-compete clauses and do-not-rehire blacklisting that prevented workers from leaving, and suppressed its workers' legal right to organize.<sup>7</sup>

For too long, the regulators who were supposed to guard the hen house of our local economies by blocking predatory mergers and acquisitions looked the other way and permitted massive consolidation across the country, hurting everyday people. Under your leadership, I hope that ends. DOJ and FTC's proposed merger guidelines take significant steps to bolster enforcement of antitrust laws and evaluate proposed mergers to protect competition and economic opportunity. I urge you to utilize the full range of your oversight and remedial authorities to defend competition and a safe and strong hospital system in Pennsylvania and across the country. Given UPMC's history, I ask that you apply the highest level of scrutiny to UPMC's potential acquisition of WHS.

Thank you for your partnership in ensuring a free and competitive health care market that protects workers and promotes access to affordable, high-quality health care for all Pennsylvanians.

Sincerely,



John Fetterman  
United States Senator

<sup>4</sup> [https://www.judiciary.senate.gov/imo/media/doc/Gaynor\\_Senate\\_Judiciary\\_Hospital\\_Consolidation\\_May\\_19\\_2021.pdf](https://www.judiciary.senate.gov/imo/media/doc/Gaynor_Senate_Judiciary_Hospital_Consolidation_May_19_2021.pdf)

<sup>5</sup> [https://thesoc.org/wp-content/uploads/2023/05/COMPLAINT\\_5.17\\_redacted.pdf](https://thesoc.org/wp-content/uploads/2023/05/COMPLAINT_5.17_redacted.pdf)

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053763 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable John Fetterman  
United States Senate  
Washington, D.C. 20510

Dear Senator Fetterman:

Thank you for your letter regarding the University of Pittsburgh Medical Center's (UPMC) proposed acquisition of Washington Health System. Although I cannot comment on the existence or details of any non-public investigations, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in health care continues to be a top Commission priority.

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission

cc: The Honorable Merrick Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

CHAIRMAN OF COMMITTEE ON  
FINANCE

**United States Senate**  
WASHINGTON, DC 20510-3703

221 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5244

December 15, 2023

The Honorable Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan,

I write to request that the Federal Trade Commission (FTC) intervene to block the proposed Kroger and Albertsons merger, given evidence that it would have serious negative impacts on Oregonians, households, and consumers nationwide. Specifically, I am concerned that the proposed merger, if approved, will result in fewer pharmacy options for Oregonians, fewer economic opportunities for Oregon's small farmers, and harm to Oregon's workers and consumers.

The proposed merger could reduce the number of pharmacies serving Oregonians. Kroger currently operates 53 retail pharmacies in Oregon, and between 2020 and 2022, Kroger-owned pharmacies provided medications to 22% of Oregonians. Albertsons owns 106 retail pharmacies and provided medications to 25% of Oregonians between 2020 and 2022. Together, these two companies are the two largest prescription pharmacy providers in Oregon. Their merger would result in one company holding 30% of the retail prescription drug market in Oregon, more than double the next largest share of any competitor.

The Oregon Health Authority undertook a preliminary review of the impact of the proposed merger on health care and found that the proposed merger would result in harmful concentration of retail pharmacies in the state. Pharmacies serve a critical role in delivering health care and providing access to medications, especially for people who live in rural and underserved areas. While Kroger and Albertsons have both reiterated their intent to not close any pharmacies, the companies cannot control the future of pharmacies in divested stores. In the wake of the 2014 Albertsons-Safeway merger, dozens of pharmacies closed in Oregon after grocer Haggen filed for bankruptcy after receiving divested stores. Retail pharmacy closures reduce choices and access to health care for consumers, often requiring longer commutes as well as switching to mail-order in lieu of seeing licensed pharmacists who recommend cheaper generic medicine and can oversee medication interactions for customers.

Further, the proposed merger's concentration of the pharmacy market in Oregon could adversely impact servicemembers and veterans, and their families. Kroger left the TRICARE network in

2022, and does not accept TRICARE at any of its retail pharmacies. While Albertsons does accept TRICARE, this merger creates uncertainty for military families regarding their future pharmaceutical care. If more pharmacies across the state leave the TRICARE network, military families will face major barriers to getting the medications they need. This is an unacceptable outcome.

I am also concerned about how this merger might impact Oregonians' privacy. As part of a recent inquiry I conducted into major pharmacy chains' privacy practices, I learned that Kroger provides pharmacy records to law enforcement officials without a warrant or any internal review by a legal professional. This finding places Kroger behind the majority of its peer chain pharmacies in terms of its commitment to safeguarding patient privacy. Warrantless medical surveillance is highly vulnerable to being weaponized, especially against people seeking reproductive healthcare or gender-affirming care that is wrongly politicized, or even criminalized, in some states. I am gravely concerned that this merger could translate to weak patient privacy protections at the majority of Oregon pharmacies, with the greatest potential for harm borne by some of our most vulnerable constituents.

To make matters worse, I fear the merger could hurt the family farms and small organic growers that secure our state's food chain. I have spent much of the last year highlighting Oregon's statewide bounty, which reflects a long-standing commitment to supporting small farmers and growers. Oregon sees major economic benefits from the work of small farmers, including those who grow specialty crops and organic foods. Unfortunately, these small businesses and entrepreneurs saw the number of purchase orders from big corporate chains drop precipitously in the wake of the Haggen merger in 2015. Absent a binding agreement to maintain or increase purchasing from local producers, I fear these smaller players will face similar harms as a result of this proposed merger.

While Kroger and Albertsons claim that many of the negative impacts of this merger can be addressed through divestitures, I am not convinced. Less than a decade ago, Albertsons-Safeway proposed a similar divestiture only to buy back many of the divested stores two years later and watch the rest go out of business. I urge the FTC to use the Albertsons-Safeway outcome as a guide to the Commission as it considers possible outcomes of this proposed merger.

Oregonians should not have their jobs, access to medicine, or access to healthy, local food rest on the often empty promises of large corporations. I urge you to block this merger.

Sincerely,



Ron Wyden

United States Senator



FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053765 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 22, 2023

The Honorable Ron Wyden  
United States Senate  
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

Although I cannot discuss any details of the investigation, the FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market. Given the high stakes for American consumers, workers, farmers, growers, honest businesses, local communities, and the nation's economy, policing merger activity and other forms of potentially anticompetitive conduct in food industries continues to be a top Commission priority.

Thank you again for your letter. If you have any questions, please feel free to have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in cursive script that reads "Lina Khan".

Lina M. Khan  
Chair  
Federal Trade Commission

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

<sup>2</sup> Notice of Policy of Disclosing Investigations of Announced Mergers: Notice of Revised Policy, 62 Fed. Reg. 18,630 (Apr. 16, 1997), [https://www.ftc.gov/sites/default/files/documents/federal\\_register\\_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf](https://www.ftc.gov/sites/default/files/documents/federal_register_notices/notice-policy-disclosing-investigations-announced-mergers/970416investigationsofannounced.pdf).



FOIA-2024-00414

UNITED STATES OF AMERICA  
0000053766 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 21, 2023

The Honorable Jacky Rosen  
United States Senate  
Washington, D.C. 20510

Dear Senator Rosen:

Thank you for your letter regarding Kroger's proposed acquisition of Albertsons and the divestiture plan announced by Kroger and Albertsons. Because Kroger has disclosed in a press release that the Federal Trade Commission ("FTC" or "Commission") is conducting a review of the proposed transaction,<sup>1</sup> I am able to confirm that the FTC is investigating the proposed merger.<sup>2</sup>

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Lina M. Khan  
Chair  
Federal Trade Commission

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<sup>1</sup> Press Release, Kroger, Kroger Comments On Second Request from Federal Trade Commission (Dec. 6, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-Comments-On-Second-Request-From-Federal-Trade-Commission/default.aspx>.

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# United States Senate

December 19, 2023

COMMITTEES  
ARMED SERVICES  
COMMERCE, SCIENCE, AND TRANSPORTATION  
CHAIR: SUBCOMMITTEE ON TOURISM,  
TRADE, AND EXPORT PROMOTION  
HOMELAND SECURITY AND GOVERNMENTAL  
AFFAIRS  
SMALL BUSINESS AND ENTREPRENEURSHIP

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue  
Washington, D.C. 20580

Dear Chair Khan:

I write with significant concerns about the proposed merger between The Kroger Company (Kroger) and Albertsons Companies, Inc. (Albertsons), and its potential impact on already high grocery costs for Nevadans. At a time when working families in Nevada and across the country are facing high costs for housing, gas, groceries, energy, and more, the Federal Trade Commission (FTC) must fully exercise its antitrust authority to review and consider blocking this merger, which could increase costs for Nevadans even further.

As you know, on October 14, 2022, Kroger announced that it would acquire Albertsons for \$43.6 billion. Were the acquisition to be approved, the five largest food retailers in the country would control more than half of all grocery sales. Nevadans are therefore understandably concerned that this merger could mean less competition and higher food costs, with the deal giving the newly-merged company the power to unilaterally raise prices in Nevada supermarkets.

The grocery store mega-merger could be particularly problematic for my state because both Kroger and Albertsons have a strong presence in Nevada. Kroger subsidiary Smith's Food and Drug has 46 grocery stores across twelve cities in Nevada, including locations in rural communities like Elko, Mesquite, and West Wendover, where there are only a few grocery options and limited competition. Albertsons, which also operates Safeway and Vons, has 35 locations in Nevada in six cities: one in Boulder City, one in Elko, four in Henderson, 27 in Las Vegas, one in North Las Vegas, and one in Pahrump. Safeway has seven total stores in Fallon, Hawthorne, Lovelock, Reno, Sparks, and Zephyr Cove. Vons has six locations in Las Vegas and three in Henderson. While I appreciate that the two companies have agreed to sell fifteen Albertsons stores in Nevada in order to address antitrust concerns, this does little to assuage concerns that the merger's resulting mega-chain will be able to raise prices on Nevadans throughout the state.

With Nevada families facing rising costs across the board, this would be a particularly challenging time for the Kroger-Albertsons merger to be approved. My constituents lack assurances that the proposed deal will not further increase food costs for hardworking Nevadans who are already getting squeezed by rising grocery prices. According to the U.S. Department of Agriculture, food prices nationwide increased nearly 10 percent in 2022 alone, with year-over-year inflation for "food at home" peaking at nearly 13.5 percent in August 2022. While inflation is slowing down in 2023, that does not mean that prices are going down, but merely that they are

not going up as quickly as last year. Nevadans cannot afford to get hit with even higher grocery prices as a result of this merger.

With this in mind, I urge the FTC to fully exercise its antitrust authority to closely review and consider blocking this merger, which has the potential to further raise grocery costs for Nevadans. I thank you for your immediate attention to this important matter.

Sincerely,



Jacky Rosen  
United States Senator





Office of the Chair

December 26, 2023

The Honorable Mazie K. Hirono  
United States Senate  
Washington, D.C. 20510

Dear Senator Hirono:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

The FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market, including oil and gas markets. Our recent merger enforcement in oil and gas markets includes:

- preventing a private equity fund from eliminating a major competitor in Utah waxy crude oil;<sup>1</sup>
- preventing the loss of close competition in three geographic markets for terminating services for gasoline, diesel fuel, and other fuel products;<sup>2</sup> and
- an action that led to the abandonment of Berkshire Hathaway Energy's proposed acquisition of the Questar Pipeline, a natural gas pipeline located in central Utah.<sup>3</sup>

The Commission's scrutiny is not limited to the largest transactions; we recognize that even smaller mergers, if unchallenged, can deprive families and small businesses of competitive markets in communities of any size. For this reason, we take an aggressive enforcement

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<sup>1</sup> Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring EnCap to Sell Off EP Energy Corp.'s Entire Utah Oil Business (Sep. 14, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-approves-final-order-requiring-encap-sell-ep-energy-corps-entire-utah-oil-business>; *see also* Press Release, Fed. Trade Comm'n, FTC Approves Final Order to Prevent Interlocking Directorate Arrangement, Anticompetitive Information Exchange in EQT, Quantum Energy Deal (Oct. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-approves-final-order-prevent-interlocking-directorate-arrangement-anticompetitive-information>.

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look-out for activity short of collusion that runs afoul of our broad authority under Section 5 of the FTC Act.

I am committed to using all available agency tools and statutory authority against all manner of law violations at any level of the oil and gas industry, including breaches of the Commission's Petroleum Market Manipulation Rule;<sup>10</sup> collusive practices or other unfair methods of competition; anticompetitive mergers; and unfair, fraudulent, or deceptive conduct. Multiple offices agency-wide police energy markets, including our consumer protection staff who provide their general expertise in evaluating potential deception and fraud in the marketplace. I have deployed staff throughout the agency to examine the applicability of the Petroleum Market Manipulation Rule in particular, as just one part of an across-the-board effort to help ensure that we have the necessary tools and the appropriate resources to address any market manipulation or other illegal conduct in oil and gas markets and beyond.

Demands on the Commission continue to grow. Merger review and litigation have strained the agency's resources and capacity to investigate new merger filings which continue to require close scrutiny. While Congress has charged the Commission with a critical mission, our resources have failed to keep pace. We currently employ fewer staffers than we did in the early 1980s, even though our nation's GDP has increased six-fold over the same period, and the Commission has been forced to make difficult decisions about prioritizing investigations. Additional resources would better equip the Commission to fully pursue its mandate and continue the vital work of promoting competition in oil and gas markets.

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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

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Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Angus S. King, Jr.  
United States Senate  
Washington, D.C. 20510

Dear Senator King:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

The FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market, including oil and gas markets. Our recent merger enforcement in oil and gas markets includes:

- preventing a private equity fund from eliminating a major competitor in Utah waxy crude oil;<sup>1</sup>
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look-out for activity short of collusion that runs afoul of our broad authority under Section 5 of the FTC Act.

I am committed to using all available agency tools and statutory authority against all manner of law violations at any level of the oil and gas industry, including breaches of the Commission's Petroleum Market Manipulation Rule;<sup>10</sup> collusive practices or other unfair methods of competition; anticompetitive mergers; and unfair, fraudulent, or deceptive conduct. Multiple offices agency-wide police energy markets, including our consumer protection staff who provide their general expertise in evaluating potential deception and fraud in the marketplace. I have deployed staff throughout the agency to examine the applicability of the Petroleum Market Manipulation Rule in particular, as just one part of an across-the-board effort to help ensure that we have the necessary tools and the appropriate resources to address any market manipulation or other illegal conduct in oil and gas markets and beyond.

Demands on the Commission continue to grow. Merger review and litigation have strained the agency's resources and capacity to investigate new merger filings which continue to require close scrutiny. While Congress has charged the Commission with a critical mission, our resources have failed to keep pace. We currently employ fewer staffers than we did in the early 1980s, even though our nation's GDP has increased six-fold over the same period, and the Commission has been forced to make difficult decisions about prioritizing investigations. Additional resources would better equip the Commission to fully pursue its mandate and continue the vital work of promoting competition in oil and gas markets.

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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

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Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Jeffrey A. Merkley  
United States Senate  
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

The FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market, including oil and gas markets. Our recent merger enforcement in oil and gas markets includes:

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Office of the Chair

December 26, 2023

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Office of the Chair

December 26, 2023

The Honorable Bernard Sanders  
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Dear Senator Sanders:

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I am committed to using all available agency tools and statutory authority against all manner of law violations at any level of the oil and gas industry, including breaches of the Commission's Petroleum Market Manipulation Rule;<sup>10</sup> collusive practices or other unfair methods of competition; anticompetitive mergers; and unfair, fraudulent, or deceptive conduct. Multiple offices agency-wide police energy markets, including our consumer protection staff who provide their general expertise in evaluating potential deception and fraud in the marketplace. I have deployed staff throughout the agency to examine the applicability of the Petroleum Market Manipulation Rule in particular, as just one part of an across-the-board effort to help ensure that we have the necessary tools and the appropriate resources to address any market manipulation or other illegal conduct in oil and gas markets and beyond.

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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

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Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Tina Smith  
United States Senate  
Washington, D.C. 20510

Dear Senator Smith:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

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Office of the Chair

December 26, 2023

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United States Senate  
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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

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Office of the Chair

December 26, 2023

The Honorable Peter Welch  
United States Senate  
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Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

The FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market, including oil and gas markets. Our recent merger enforcement in oil and gas markets includes:

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I am committed to using all available agency tools and statutory authority against all manner of law violations at any level of the oil and gas industry, including breaches of the Commission's Petroleum Market Manipulation Rule;<sup>10</sup> collusive practices or other unfair methods of competition; anticompetitive mergers; and unfair, fraudulent, or deceptive conduct. Multiple offices agency-wide police energy markets, including our consumer protection staff who provide their general expertise in evaluating potential deception and fraud in the marketplace. I have deployed staff throughout the agency to examine the applicability of the Petroleum Market Manipulation Rule in particular, as just one part of an across-the-board effort to help ensure that we have the necessary tools and the appropriate resources to address any market manipulation or other illegal conduct in oil and gas markets and beyond.

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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Charles E. Schumer  
United States Senate  
Washington, D.C. 20510

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Lina M. Khan  
Chair, Federal Trade Commission

cc: The Honorable Amy Klobuchar  
The Honorable Elizabeth Warren  
The Honorable Edward J. Markey  
The Honorable Mazie Hirono  
The Honorable Angus S. King Jr.  
The Honorable Ron Wyden  
The Honorable John Fetterman  
The Honorable Brian Schatz  
The Honorable Peter Welch  
The Honorable Debbie Stabenow  
The Honorable Sheldon Whitehouse  
The Honorable Tina Smith  
The Honorable Bernie Sanders  
The Honorable Tammy Baldwin  
The Honorable Richard Blumenthal  
The Honorable Jack Reed  
The Honorable Jeanne Shaheen  
The Honorable Jeffrey A. Merkley  
The Honorable Tammy Duckworth  
The Honorable Cory A. Booker  
The Honorable Jacky Rosen  
The Honorable Margaret Wood Hassan





FOIA-2024-00414

UNITED STATES OF AMERICA  
00000053867 "UNCLASSIFIED" 2/15/2024  
Federal Trade Commission

WASHINGTON, D.C. 20580

Office of the Chair

December 26, 2023

The Honorable Tammy Baldwin  
United States Senate  
Washington, D.C. 20510

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Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

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Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Richard Blumenthal  
United States Senate  
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

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Office of the Chair

December 26, 2023

The Honorable Tammy Duckworth  
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Washington, D.C. 20510

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Act even where there is no proof that the competitor accepted the invitation.”), [https://www.ftc.gov/system/files/documents/federal\\_register\\_notices/2018/03/oregon\\_frn\\_3-15-18.pdf](https://www.ftc.gov/system/files/documents/federal_register_notices/2018/03/oregon_frn_3-15-18.pdf).

<sup>10</sup> See Prohibition of Energy Market Manipulation Rule, 16 C.F.R. Part 317. Section 811 of the Energy Independence and Security Act of 2007 (EISA) authorized the FTC to issue regulations to prohibit any manipulative or deceptive device or contrivance in wholesale petroleum markets. Section 812 of EISA makes it unlawful for energy companies to report false or misleading information related to the wholesale price of crude oil, gasoline, or petroleum distillates to a federal department or agency under certain conditions. The FTC can sue violators of EISA or of the Petroleum Market Manipulation Rule in federal court.



Thank you again for raising your concerns about the anticompetitive effects of oil and gas mergers. If you or your staff have any questions, please don't hesitate to contact Jeanne Bumpus, the Director of the FTC's Office of Congressional Relations, at (202) 326-2195.

Sincerely,

A handwritten signature in black ink that reads "Lina Khan". The signature is written in a cursive, flowing style.

Lina M. Khan  
Chair, Federal Trade Commission



Office of the Chair

December 26, 2023

The Honorable Margaret Wood Hassan  
United States Senate  
Washington, D.C. 20510

Dear Senator Hassan:

Thank you for your letter expressing your concerns about ExxonMobil's proposed acquisition of Pioneer Natural Resources and Chevron's proposed acquisition of Hess.

The FTC diligently pursues its statutory mandate to protect Americans from mergers that may substantially lessen competition or tend to create a monopoly in any market, including oil and gas markets. Our recent merger enforcement in oil and gas markets includes:

- preventing a private equity fund from eliminating a major competitor in Utah waxy crude oil;<sup>1</sup>
- preventing the loss of close competition in three geographic markets for terminating services for gasoline, diesel fuel, and other fuel products;<sup>2</sup> and
- an action that led to the abandonment of Berkshire Hathaway Energy's proposed acquisition of the Questar Pipeline, a natural gas pipeline located in central Utah.<sup>3</sup>

The Commission's scrutiny is not limited to the largest transactions; we recognize that even smaller mergers, if unchallenged, can deprive families and small businesses of competitive markets in communities of any size. For this reason, we take an aggressive enforcement

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<sup>1</sup> Press Release, Fed. Trade Comm'n, FTC Approves Final Order Requiring EnCap to Sell Off EP Energy Corp.'s Entire Utah Oil Business (Sep. 14, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-approves-final-order-requiring-encap-sell-ep-energy-corps-entire-utah-oil-business>; see also Press Release, Fed. Trade Comm'n, FTC Approves Final Order to Prevent Interlocking Directorate Arrangement, Anticompetitive Information Exchange in EQT, Quantum Energy Deal (Oct. 10, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-approves-final-order-prevent-interlocking-directorate-arrangement-anticompetitive-information>.

<sup>2</sup> Press Release, Fed. Trade Comm'n, FTC Approves Final Order to Protect South Carolina and Alabama Markets from Anticompetitive Gasoline Terminal Deal (Aug. 9, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-approves-final-order-protect-south-carolina-alabama-markets-anticompetitive-gasoline-terminal>.

<sup>3</sup> Press Release, Fed. Trade Comm'n, Statement Regarding Berkshire Hathaway Energy's Termination of Acquisition of Dominion Energy, Inc.'s Questar Pipeline in Central Utah (Jul. 13, 2021), <https://www.ftc.gov/news-events/press-releases/2021/07/statement-regarding-berkshire-hathaway-energys-termination>; see also Press Release, Infineum, Acquisition Terminated (Feb. 16, 2023), <https://www.infineum.com/en-gb/news/acquisition-terminated/>.

stance to prevent competitive harm, whether the merger involves a few stations<sup>4</sup> or hundreds.<sup>5</sup> We also recently returned to the practice of using “prior approval” provisions in merger settlements regarding future relevant merger activity, and we continue to assess additional ways we can deter those who propose unlawful transactions.<sup>6</sup>

As federal agencies with shared responsibility to enforce the antitrust laws, the FTC and DOJ finalized new merger guidelines in December 2023, as part of an ongoing joint project to better reflect how the agencies determine a merger’s effect on competition in the modern economy and evaluate proposed mergers. The revised guidelines touch on all industries, including oil and gas markets. The merger guidelines reflect learning gained throughout workshops and hearings, which brought together FTC and DOJ staff, staff from offices of state attorneys general, international enforcement partners, academics, and other experts.

In addition to merger enforcement, the FTC maintains close oversight of oil and gas markets throughout the country to ensure that market participants are not engaging in unlawful activity at the expense of the American public. The FTC has assembled vast competition policy and enforcement expertise in matters affecting the production and distribution of gasoline.<sup>7</sup> Our recent efforts have included identifying and stamping out a wide-ranging agreement that allegedly harmed competition in local retail gasoline and diesel fuel markets.<sup>8</sup> Section 5 reaches beyond the limits of other antitrust laws such as the Sherman Act. The Commission has long relied on its Section 5 authority to combat “invitations to collude,”<sup>9</sup> and we remain keenly on the

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<sup>4</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Approves Final Order Restoring Competitive Markets for Gasoline and Diesel in Michigan and Ohio (Aug. 9, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-approves-final-order-restoring-competitive-markets-gasoline-diesel-michigan-ohio>; Press Release, Fed. Trade Comm’n, FTC Approves Final Order Imposing Divestitures and Protecting Retail Fuel Customers Following Global Partners LP’s Acquisition of Wheels (Mar. 3, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-approves-final-order-imposing-divestitures-protecting-retail-fuel-customers-following-global>; Press Release, Fed. Trade Comm’n, FTC Approves Final Order Imposing Conditions on Casey’s General Stores, Inc.’s Acquisition of Buck’s Intermediate Holdings, LLC (Jun. 9, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-approves-final-order-imposing-conditions-caseys-general-stores-incs-acquisition-bucks>.

<sup>5</sup> See, e.g., Press Release, Fed. Trade Comm’n, FTC Approves Final Order Requiring Divestitures of Hundreds of Retail Gas and Diesel Fuel Stations Owned by 7-Eleven, Inc. (Nov. 10, 2021) (modified Jan. 24, 2023 to correct scrivener’s errors), <https://www.ftc.gov/news-events/press-releases/2021/11/ftc-approves-final-order-requiring-divestitures-hundreds-retail>; see also Press Release, Fed. Trade Comm’n, FTC Sues 7-Eleven for Anticompetitive Acquisition in Violation of 2018 Consent Order (Dec. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-sues-7-eleven-anticompetitive-acquisition-violation-2018-consent-order>.

<sup>6</sup> Press Release, Fed. Trade Comm’n, FTC to Restrict Future Acquisitions for Firms that Pursue Anticompetitive Mergers (Oct. 25, 2021), <https://www.ftc.gov/news-events/press-releases/2021/10/ftc-restrict-future-acquisitions-firms-pursue-anticompetitive>; see also Fed. Trade Comm’n, Statement of the Commission on the Use of Prior Approval Provisions in Merger Orders (Oct. 25, 2021), <https://www.ftc.gov/public-statements/2021/10/statement-commission-use-prior-approval-provisions-merger-orders>.

<sup>7</sup> Oil and Gas Industry Initiatives, <https://www.ftc.gov/advice-guidance/competition-guidance/industry-guidance/oil-gas-industry-initiatives>.

<sup>8</sup> Press Release, Fed. Trade Comm’n, FTC Approves Final Order Restoring Competitive Markets for Gasoline and Diesel in Michigan and Ohio (Aug. 9, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-approves-final-order-restoring-competitive-markets-gasoline-diesel-michigan-ohio>.

<sup>9</sup> See, e.g., Oregon Lithoprint, Inc., Docket No. C-4645, Analysis to Aid Public Comment, 83 Fed. Reg. 11,529, 11531 (Mar. 15, 2018) (“The Commission has long held that an invitation to collude violates Section 5 of the FTC

look-out for activity short of collusion that runs afoul of our broad authority under Section 5 of the FTC Act.

I am committed to using all available agency tools and statutory authority against all manner of law violations at any level of the oil and gas industry, including breaches of the Commission's Petroleum Market Manipulation Rule;<sup>10</sup> collusive practices or other unfair methods of competition; anticompetitive mergers; and unfair, fraudulent, or deceptive conduct. Multiple offices agency-wide police energy markets, including our consumer protection staff who provide their general expertise in evaluating potential deception and fraud in the marketplace. I have deployed staff throughout the agency to examine the applicability of the Petroleum Market Manipulation Rule in particular, as just one part of an across-the-board effort to help ensure that we have the necessary tools and the appropriate resources to address any market manipulation or other illegal conduct in oil and gas markets and beyond.

Demands on the Commission continue to grow. Merger review and litigation have strained the agency's resources and capacity to investigate new merger filings which continue to require close scrutiny. While Congress has charged the Commission with a critical mission, our resources have failed to keep pace. We currently employ fewer staffers than we did in the early 1980s, even though our nation's GDP has increased six-fold over the same period, and the Commission has been forced to make difficult decisions about prioritizing investigations. Additional resources would better equip the Commission to fully pursue its mandate and continue the vital work of promoting competition in oil and gas markets.

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