

FTC Open Commission Meeting

January 19, 2023

Rebecca Slauhgtter:

Good morning everyone, and thank you for joining us for the first open commission meeting of this new year. As you may know, Chair Khan had her baby this weekend, and I hope you will allow me a point of personal privilege to offer all of our congratulations to her. This is such an exciting and happy time and we are so glad for her and for her family. And that is why she is not able to join us today. So I will be presiding over today's meeting and I will now call this meeting to order. The commission is meeting in open session to consider certain items. As we always do, let's start by hearing from members of the public. Our OPA Director, Doug will run this portion of the meeting and I will turn it over to him.

Douglas Farrar:

Thank you, Commissioner Slaughter, and let me also take a point of privilege to extend my congratulations to the Chair on the birth of her son. My name is Doug and I'm the Director of Public Affairs here at the FTC. And all of us the FTC are looking forward to hearing from the public today. Please note that the FTC is recording this event and some or all of it may be made available to the public record in accordance with commission's rules. Now I'm going to call in several members of the public who have joined us and each person will be given two minutes to address the commission. So let's begin with Pam Nixon. Pam, go right ahead.

Pam Nixon:

Thank you, Chair and Commissioners. The profusion of health apps, websites and digital tools that provide consumers with assistance and insights about their health is a positive development. However, it has come at the cost of increasing privacy risks. One of these risks is that consumers are confused about when and where federal health privacy protections apply to their health information. Many health-related websites and tools have not been clear about their HIPAA status. Some apps may infer HIPAA coverage in privacy policies with terms such as, "We are HIPAA compliant." Even when they are not regulated under HIPAA, sometimes you'll see this phrase. Other times websites or apps will simply omit to disclose that they are not regulated under HIPAA. As the commission knows, HIPAA does not generally regulate all data everywhere. HIPAA generally regulates specific entities such as healthcare providers who are then obliged to provide HIPAA protections to the data that they hold.

Many fitness and health-related websites and apps are simply not regulated under HIPAA. This is true even if they hold an entire medical record that a consumer or customer has given to them. Consumers need to know plainly and simply whether or not a digital service or app or website is regulated under HIPAA or not. There needs to be a clear and prominent statement in the privacy policy that says, "We are not regulated under HIPAA. If you share your information with us, it will not have HIPAA protections when we hold it." The World Privacy Forum urges the commission to take action to protect consumers by insisting on a prominent, clear, simple statement regarding the status of whether or not a particular digital tool or service is regulated under HIPAA or not. Thank you. We look forward to working with you on this important issue.

Douglas Farrar:

Thank you very much, Pam. The next speaker is Chatrane Birbal. Chatrane.

Chatrane Birbal:

Good morning and thanks to the FTC for the opportunity to address the commission today. I'm speaking on behalf of HR Policy Association. We are a membership organization representing the chief human resource officers of more than 400 of the largest corporations doing business in the United States and globally. The association and our member companies are concerned about the FTC's recent NPRM to ban the use of non-compete agreements in the employment context. We believe that non-compete agreements, when used responsibly can help companies protect vital investments in their employees while ensuring the security of research and development, trade secrets and institutional knowledge.

As such, we oppose a blanket restriction on the use of non-compete clauses in employment agreements, especially as it relates to senior executive levels. We will submit formal comments articulating our point of view and the impact of the broad proposed rule that would have on company's talent and compensation strategies. In the meantime though, we are asking that the FTC extend the comment period for the NPRM for an additional 60 days. This rulemaking, as the FTC itself acknowledges, will impact a significant portion of the economy. The regulated community therefore should be given sufficient time to assess the potential consequences of the rulemaking and develop insightful comments for the commission to consider. Thank you again for the opportunity and we look forward to working with the commission on this issue.

Douglas Farrar:

Thank you Chatrane for your comments. The comment period for this rule is open and we encourage you and others to go make comments on it. All right, the next speaker is Shane Stacy. Shane.

Shane Stacy:

My concern is about privacy and also what the uses of data is. For instance, there has been several cyberattacks. One of those was claimed by Microsoft stating that there was material on my computer and I had open AI during a recent arbitration. The thing is, there needs to be some sort of control whenever companies decide if they're going to come and remove it or not. Or whether it is in the grounds of the, let's say the FBI or some sort of, the computer... I think it's the cyberterrorism. Such as I had permission to have that AI or machine learning due to working with a company that I'm not allowed to say, but it's because of development programs and I had a license to work with that program. Now, the thing is, is keeping up with policy. That type of files were publicly displayed on a website and that should not happen because that endangers my safety. Those type of things cannot be displayed for everybody else to see because it creates an environment of hostility and violates public harassment towards the user. [inaudible 00:07:33].

Douglas Farrar:

Thank you very much, Shane. Thank you very much. We've reached the two minutes. Appreciate your comments. Next we have Bilal Sayyed. Bilal.

Bilal Sayyed:

Thank you. I ask that the commission consider an idea first raised by former commissioner attorney Neil Averitt, 30 years ago. Neil proposed that the Bureau of Competition distributed a collusion reporting form. His draft was a one-page form that most importantly included a checklist of factors that might indicate sellers were engaged in collusive behavior. Once marked up, the form could be mailed directly

to the agency. No stamp or envelope required. The idea was not adopted by BC, but Neil mentioned it to me during my first tour at the FTC. I raised it with NBC, but BC did not adopt it. When I returned to the FTC in 2018, I explored it again within OPP, but my limited effort to move forward with it was not successful. There was some concern that DOJ would not approve of this effort, that it stepped on their cartel program.

Also, opinions may differ and did differ on what should be included on the checklist, but these obstacles can be overcome. In November 2019, the DOJ announced the formation of a procurement collusion strike force focused on government procurement. Implementation of Neil's idea could complement this, but the form should be distributed broadly and not limited to a focus on government procurement. Closer ties with procurement officials directly or through trade associations, may benefit the commission's case generation efforts, including in broadly accepted areas where conduct does not violate the Sherman Act but may violate Section 5. Invitations to collude, for example.

The agencies have materially on their websites describing the antitrust laws and both allow individuals to email about suspected antitrust violations. However, I wonder if these layman's guide to the antitrust laws are optimized to trigger a concern about possible collusive behavior. This is true I think even for DOJ's six page [inaudible 00:09:35] on price fixing bid rigging and market allocation. A simple desk copy of a one-page form with a checklist of factors suggesting possible collusion may be more helpful in getting an individual to recognize possible or attempted collusion. I suspect there are still copies of Neil's form in the files of what is now OPC, so I think it's time to dust them off and the commission to reconsider this idea. Thank you.

Douglas Farrar:

Thank you, Bilal. The next speaker is Charlotte Slaiman. Charlotte.

Charlotte Slaiman:

Thank you. I'm the Competition Policy Director at Public Knowledge. I'm nonprofit working in the public interest for over 20 years. I want to thank the Federal Trade Commission for your notice of proposed rulemaking to declare non-compete clauses and unfair method of competition. Public Knowledge is particularly concerned about the impact of non-compete clauses on innovation and a competitive marketplace. In addition to harms to workers, non-compete clauses also harm consumers, by deterring new business formation. Which can lead to diminished competition, innovation and product quality as well as higher prices. I am very concerned about dominant firms squashing disruptive innovation to maintain a status quo that supports their dominant position in the market. An employee might come up with a great new idea, but the large firm where she works may not find this disruptive innovation in its own strategic interest. That employee ought to be able to quit and bring her idea to market at another firm or on her own.

I also want to take a moment to highlight the importance of rulemaking as a tool for the FTC. Rules are efficient. They save resources by giving clear notice as to what is and isn't allowed. This can cut down on litigation. Saving money for the American taxpayer as well as the businesses regulated by the FTC. Rules can keep up with the pace of innovation. Litigation to clarify, the law takes a long time. It took many years of lawsuits for the FTC to finally demonstrate that pay-for-delay settlements can violate the antitrust laws. Rulemaking, especially APA rulemaking can give clarity to the market on a much quicker timeline. Thank you so much for your hard work on this issue.

Douglas Farrar:

Thank you, Charlotte. The next speaker is Ginger Quintero-McCall. Ginger.

Ginger Quintero-McCall:

Thank you. Thank you for the opportunity to provide comments. My name is Ginger Quintero-McCall and I'm the legal director at Demand Progress. We commend the commission on its proposed rulemaking to ban non-compete clauses. These clauses are anti-competitive and harmful to workers. They depress wages by keeping workers from moving on to better opportunities. Their widespread use for low-wage workers contradicts the excuse that employers use to justify them, that they will protect IP and employer investments in workers. To the contrary, a non-compete clause actually encourages employers to treat workers more poorly because the workers are less empowered to leave. For these reasons, we laud the commission's efforts to protect workers and ban non-compete clauses. Additionally, we urge you to move forward with a comprehensive privacy rulemaking, as we laid out in our comments on your recent ANPRM on commercial surveillance and data security.

The agency's rulemaking should be based on fair information practices of venerable framework for ensuring that consumers maintain control over their own personal data. The framework has been the basis of the EU GDPR, California's privacy statutes and the Privacy Act. The FTC should ensure that companies are collecting the minimum amount of personal data necessary to accomplish the goals that the consumer desires. Harmful uses like surveillance advertising should be banned outright. Consumers should have the right to know what personal data is being collected and how it's being used, as well as the ability to correct inaccuracies and rescind their prior permissions to use their personal data.

Companies that collect personal data should be required to encrypt sensitive personal data and failures to properly secure information should be met with stiff penalties. Practices that are not in line with these requirements are by definition unfair and should be the subject of meaningful monetary penalties. As we saw in the last congressional session, Congress cannot be counted on to solve problems or regulate big tech companies. We've watched bills with broad public support like the antitrust package and the privacy bill, languish without introduction on the floor. This is why the FTC must step in with its authority to punish unfair and deceptive trade practices and protect consumers. Thank you.

Douglas Farrar:

Thank you, Ginger. Since we've had a couple comments on the NPRM on non-competes in a row, I just want to remind you and everyone else that the opportunity to comment on regulations.gov is open and we encourage you and others watching to navigate there on your websites and provide comment to us that way as well. Thank you very much. Okay. Barin Sohka. Barin.

Barin Sohka:

Thank you. As Chair Lina Khan recently noted at the Privacy and Security Forum, the notice and choice model of privacy has proven inadequate to protect consumers from a wide variety of harms. On this basic fact there has long been broad consensus among privacy scholars. What comes next is as Chair Khan put it, a major question for policymakers to decide. Indeed, it is exactly that. The FTC appears eager to resolve such major questions itself by issuing a wide range of privacy rules. The Magnuson Laws Act does indeed empower the FTC to issue consumer protection, [inaudible 00:14:50] but that doesn't mean the FTC can issue any rules it wants. As the Supreme Court recently reminded us in *West Virginia versus EPA*, courts expect the Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance. The broad and general language of Section Five simply does not provide any clear statement that would empower the FTC to decide such major questions as whether America should fundamentally change its approach to data governance by moving to something more like the European Union's General Data Protection Regulation.

And if it did, Section 5 might constitute an impermissible delegation of lawmaking power under the non-delegation doctrine, which a majority of the Supreme Court is clearly ready to revive after its Gundy decision.

So the commission should leave the major questions about how data may be collected, used and processed to democratically elected representatives of the American people. Congress is closer to enacting comprehensive baseline privacy legislation than ever before. If the FTC persists in trying to decide such questions for itself, it will likely lose in court as tech freedom's recent comments explained. The enormous amounts of FTC staff time needed to conduct a Magnuson-Moss rulemaking, would all be wasted. Even worse,

Berin Szóka:

First, if the FTC's commercial surveillance rulemaking is anywhere near as broad as its AMPR, the years' long process could provide an easy excuse for lawmakers to fail to hammer out comprehensive federal privacy legislation. The commission should stick to addressing discreet privacy problems and objectively verifiable harms without trying to weigh subjective values against each other.

Douglas Farrar:

Okay, Berin. Thank you very much. Keenan Calhoun. Keenan.

Keenan Calhoun:

Hi there. Yeah. My name is Keenan Calhoun. I'm a grocery store worker at Fred Meyer, a Kroger brand in Seattle since 2014. I have many concerns about the proposed merger of Kroger and Albertsons as a union grocery store worker and for our customers and communities across the country. I grew up in Longview, Washington, down along the Columbia River near the Oregon border. A town like many across America, we had national brand grocery supermarkets and a local independent grocery store. But then Walmart moved in. Over time, the pricing forces were too much for the smaller local independent store to compete and the local store closed. We ended up with a Walmart, Kroger, and Safeway, leading to less competition in the industry. We need more competition, not less.

In November, I traveled the Washington D.C. and attended the U.S. Senate hearing and witnessed the CEOs of both Albertsons and Kroger testify before the antitrust subcommittee. I was troubled by what I saw. Both companies have been trying to sell their proposed merger as necessary to compete with Walmart, but they know that's not true. Kroger has been competing well with Walmart in towns across the country. Their huge profits show that, and Albertsons' profit and cash flow shows that they have been doing great as well. Their CFO testified in December in a court case in my home state of Washington, challenging their massive \$4 billion debt. She stated that they're very well off and have significant cash flow so that they have this \$4 billion to give back to shareholders.

So let's not kid ourselves. They're proposing to merge so that they will be bigger and that will reduce competition in our communities. It will result in closing stores, reducing competition for prices, reduce choices for shoppers, and will reduce the number of diverse employers in our communities. All of these are a threat to a more robust marketplace and jobs like mine. This merger also threatens our union pension plan, which in many places are drastically underfunded. Thank you for having me, and thank you to the other grocery workers who I know are going to be making comments as well.

Douglas Farrar:

Thank you very much, Keenan. Appreciate you taking the time to come here and give us a comment. Daryll Ortega. Daryll? Daryll, are you there? Daryll?

Daryll Ortega:

I'm here.

Douglas Farrar:

There we go.

Daryll Ortega:

Hear me?

Douglas Farrar:

Yes, sir.

Daryll Ortega:

Hi. I'm Daryll Ortega and I've been in the grocery industry for 36 years. I'm an assistant produce manager in a Vons in southern California. I'm here today to be against the proposed merger between Kroger and Albertsons. I think it'll be harmful to the customers and the workers alike. I've been through this before in my 36 years, more than once. Once with Super Value and a lot of journeymen positions were eliminated. People with over 20 years were eliminated from the staff. I was caught in one with Haggen, and I was reduced from 40 hours to 24 hours overnight. I had a baby, a mortgage, daycare. I almost lost my house. The only thing that saved it is I had a classic car that I'd had my whole life, and luckily I had that asset because I was able to sell that and make ends meet until I was able to get back on my feet again. I was able to keep my seniority luckily, and I'm in a much better place now.

I just don't see how this merger could be good for competition, especially where we're at up here, they say they want to compete with the Walmarts and the Sam's Clubs and all that stuff. But up here in this area, there is none. There'll just be one company in the whole area right here. There'll be zero competition. I just don't see how this will be good for any of us. Thank you for having me and have a great day.

Douglas Farrar:

Thank you so much, Daryll, for your comments. We really appreciate it.

Daryll Ortega:

Thank you.

Douglas Farrar:

The next speaker is Naomi Oligario. Naomi, are you there? Naomi?

Naomi Oligario:

Hi there.

Douglas Farrar:

Hi.

Naomi Oligario:

Hi, my name is Naomi Oligario. I have been a grocery store worker for almost 38 years. I have worked in my Safeway for the majority of that time, but have helped out in several different Albertsons Safeway stores in Kitsap County in Washington State. I witnessed firsthand the destruction for workers and the reduced competition that took place in our communities when Albertsons purchased Safeway less than 10 years ago, causing the Haggen fiasco. I had friends lose jobs after years of dedicated employment and like thousands of grocery store workers all across this country, our bodies are worn out from all the hard work we do. We can't handle another mess like what happened with the last merger.

Over the last three years during COVID, I, like everyone, have seen how important our grocery stores are for our health and wellbeing. There are places that our neighbors depend on to get food and other necessities, but they also served as one of the few places where people see and connect with each other. Our stores become a place for human contact for so many of us who were losing contact with each other. The resilience of our society literally needed all those stores we have. We have also seen our customers spending more and more of their hard earned money at the grocery store. And over the last year with food inflation, this spending has driven up the profits of Albertsons and Kroger. Not selling more products but by increasing the profits and the products they sell.

If a merger like this were to be approved, I can say from firsthand knowledge, there would be even less competition to hold down those price increases. I don't believe all the price increases right now are the result of higher costs in the food supply chain. Some of it is these companies just charging us more. The threat of more price gouging is much higher if these two national change were to merge. I'm worried about what that would mean for shoppers in my hometown as well as across the country. We need our stores. Please do whatever you can to make sure we don't lose our stores. Thank you for your time.

Douglas Farrar:

Thank you so much, Naomi. I appreciate your comments. Matt Sturbaum. Matt.

Matt Sturbaum:

Thank you. My name is Matt Sturbaum of Denver, Colorado. I have been in a management role in the produce department at Safeway for almost two decades. When the Kroger Albertsons merger news broke, I immediately felt trepidation and had concerns about my future. I remember when Safeway merged with Albertsons in 2015, resulting in store closures and job losses. I couldn't agree more with Senator Mike Lee who recently stated in a hearing that the Safeway Albertsons merger was "an embarrassing failure." Well, that failure led to the loss of thousands of jobs and well over 100 store closures, including in Colorado.

I oppose the Kroger Albertsons merger because people's livelihoods are at stake. There are thousands of workers in my state who could lose their jobs and have their pensions decimated. I personally know Safeway retirees and employees about to retire whose only source of retirement income is their pension. From an antitrust point of view, limiting competitive grocery options in Colorado communities will lead to price increases for consumers and place an unnecessary financial burden on Colorado families.

Unfortunately, we're at a time where companies aren't growing organically anymore. They're growing through consolidation and mergers. This particular merger would also give Kroger the power to squeeze local small businesses and suppliers, the same small businesses and suppliers who create local jobs. Finally, it would grant Kroger the ability to set and control food prices across the markets in which they operate.

At the end of the day, this merger would be terrible for the company's workers, terrible for their suppliers, and terrible for consumers coast to coast. It can only benefit these companies' executives and

their shareholders. And because of that, I respectfully ask the FTC to oppose this merger. Thank you for your time.

Douglas Farrar:

Thank you, Matt. Thank you very much for your comments. The next speaker is Carol McMillian. Carol.

Carol McMillian:

Hello, my name's Carol McMillian and I've worked at King Soopers in Aurora, Colorado for the last eight years as a bakery manager. I also worked at Safeway for almost 11 years before that, and I experienced firsthand the 2015 Albertsons merger as well as my coworkers. There were store closures, good employees terminated for nonsense reasons, and people that were called that we call terminators went around to stores to determine if they should close or stay open. It was a traumatic experience for the workers. With the news of the proposed Kroger Albertsons merger, I found myself fearing for my own job loss again. But as a community member, I have other concerns as well.

So I'm here today to remind the FTC of its mission to prevent business practices that are anti-competitive or unfair to consumers. In the case of this merger, the proposed transaction hits both points. Economists have pointed out the dangers of an anti-competitive market in which the duopoly can dictate food, prescription, gas prices to consumers. Unlike Taylor Swift tickets, these are essential goods. My other concern is the deterioration of neighborhoods where there are big empty storefronts. These stores are often anchored in shopping plazas with other stores, and the lack of foot traffic will negatively impact them as well as local jobs. Last, empty stores attract crime, and that's the last thing our communities need. I ask the FTC commissioners to please oppose this merger. Thank you for your time. I appreciate the opportunity to speak today. Thank you.

Douglas Farrar:

Thank you, Carol. Appreciate your comments. The next speaker is Nancy Piwovar. Nancy?

Nancy Piwovar:

Yes. Good morning FTC commissioners and staff. I appreciate that the FTC is proposing rules to ban non-compete agree clauses. In my community, the abuse of a non-compete employment agreement began in 2002 and has expanded over time to the misuse of medical non-compete agreements on real estate that restrict healthcare services. A New Jersey hospital system took a neurosurgeon to court to enforce a non-compete agreement. The doctor's attorney described the hospital system as having the audacity to try to monopolize the market in central Jersey. The case went to the New Jersey Supreme Court. The judgment of the appellate division was affirmed and reversed in part.

The doctor, his medical practice, family and colleagues, and healthcare consumers were subject to hardships that had a chilling effect. In hindsight, it appears that this may have empowered the hospital system to continue to monopolize the market in central Jersey because in four years, the system closed a competing hospital. Potential buyers of the closed hospital were roadblocked. After a court hearing, the property was sold to a private developer. Pro se litigants protested because a medical non-compete restrictive covenant was incorporated in the sale. My objection was noted in the judge's order, which was filed with the deed. This inclusion is very uncommon. In my layperson's perspective, justice was denied. The saga continues.

Recently, another portion of the former hospital property was sold by the developer. That piece also has a medical non-compete restrictive covenant. What makes this even more egregious is that public funds were used for this transaction. I applaud the FTC's efforts to provide federal regulatory oversight

proposing rules to ban non-compete clauses, which [inaudible 00:28:59] workers harm and stifle competition have hidden invisible consequences, a complex issue. When a healthcare institution executes a medical non-compete agreement, the community and healthcare consumers suffer, feel exploited, and some die to the lack of access to care. Thank you very much.

Douglas Farrar:

Thank you, Nancy, for your comments. We appreciate them. There are two more speakers left, and the first one is Joseph Van Wye. Joseph?

Joseph Van Wye:

Thank you very much. My name is Joe Van Wye and I am the policy and outreach director at Farm Action, a farmer-led organization working to promote competition in our food system and revitalize rural communities. We would like to thank the chair and the entire commission for holding today's open meetings and for providing an opportunity to comment on your excellent work to foster competition across our economy. First, we were thrilled by the commission's proposed rules put an end to anti-competitive non-compete agreements for workers. Farm Action has a long haul on the commission to issue this rule and we were very happy to see express and depth in preventing these coercive provisions. We commend the commission for this important pro-worker step and encourage you to resist any changes that would weaken it as you finalize this rule.

Second, we appreciate the commission's enhanced oversight of potentially anti-competitive mergers and acquisitions. Specifically, we request that the FTC closely examine the proposed merger between Kroger and Albertsons. We at Farm Action are concerned that this merger will harm food producers across our economy, reduce competition and retail growth rate, increase prices for consumers, and reduce power among some of our society's most vulnerable workers. We oppose this merger and urge the commission to prevent the confirmation of this deal.

Last, I would like to bring to your attention a letter Farm Action sent to the commission earlier today highlighting potential price gouging and anti-competitive coordination in egg markets. As we outlined in our letter, Cal-Maine, the largest egg producer in the country, recorded a tenfold year-over-year increase in gross profits last year, while egg prices have more than doubled for consumers in the last year. Dominant egg producers maintained at these price hikes are justified by supply chain disruptions in [inaudible 00:31:06], but egg length block sizes were not seriously impacted and producers recorded a record high lay rates among the remaining hens. Their explanation does not adequately explain the price increases when Farm Action calls on the commission to promptly investigate this behavior and determine whether egg producers have taken advantage of their monopoly power to take money from the pockets of consumers to pad their bottom line. Thank you again for your work to protect consumers and to promote competition and for your time today.

Douglas Farrar:

Thank you, Joe. Now we have two more. Anyone joining after this will be too late unfortunately, but our second to last speaker will be Ron Graff. Ron? Ron, are you there? Ron?

Ron Graff Jr.:

Yes, yes.

Douglas Farrar:

There we go. Go right ahead.

Ron Graff Jr.:

Thank you. My name is Ron Graff Jr. of Columbiana

Ron Graff Jr.:

... Columbiana Foods Inc. of Northeast Ohio, current National Grocers board member and I'm a proud family grocer. My grandfather worked for MP for 55 years and my dad opened up our first store in the Youngstown, Ohio area back in 1978. Now we operate three independent stores under the Giant Eagle banner. We started up our business when the steel mills in our area were closing down. We've seen our community through some tough economic times and we're not afraid of fair competition. What we are worried about is unfair competition from chains so big they make up rules that have a direct effect on my business and my customers.

During the lockdown, the big chains made sure they were fully stocked up on paper products. I had to buy a tractor trailer or truckloads from neighboring country Canada. It is fair that they could get all they needed and we couldn't. Supply's an ongoing problem still today, especially with eggs, baby products like formula, and pet food. I go buy the big stores and their shelves are full. I can get maybe 50% of my products in my stores. And how is that that they can afford to sell many of their products for less than I pay for them? We all know that the big chains get special pricing rebates that smaller operators don't because we see it in their stores and behind closed doors, we're told as much too. Our argument is sure those big stores are getting better pricing because smaller stores like mine are paying a higher cost.

The politicians wonder why there are food deserts. Usually, it's because the big change put all the smaller stores out of business. Everybody tries to get the best price. That's business, but I shouldn't have to pay extra to offset the price breaks some big chains are squeezing out of the vendors. We don't want to restrict free trade and we're not anti-capitalists. We're business owners. Our ask today is a level playing field for everybody, whether it's pricing or the availability of products. All we're asking is that you just enforce the laws that are already on the books. Once again, on behalf of myself and the National Groceries Association, I thank you for your time today.

Douglas Farrar:

Thank you, Ron. Thank you for your comments. Okay. The last speaker is Lawanna Archer. Lawanna, are you there?

Lawanna Archer:

[inaudible 00:34:24]. Good morning.

Douglas Farrar:

Good morning.

Lawanna Archer:

My name is Lawanna Archer. I work for Vons in Gardena, California. I have worked for Vons for 25 years and I'm very concerned about the harmful consequences that this mega merger will have for myself and 1000s of workers, as well as customers if the FTC approves this merger. Some of my coworkers lost their jobs in 2015 during the Haggen and Albertsons merger. I saw massive layoffs, cars being repossessed, foreclosure notices and loss of benefits. I know a lot of people went through that. The worst thing some

of my friends have ever experienced. No worker should have to go through the same stressful situations.

I'm a single mother of a 13-year-old whom I provide for by myself. This merger could possibly impact me in the most harmful ways. We're currently able to have my benefits. I'm able to go to the dentist. I'm able to take care of my daughter with no problems right now. I suffer from a neurological brain disease that I was diagnosed with in 2018, and it's pretty stressful enough for me on myself and my daughter to see me struggle every day, work hard, fight to try to keep my sanity to make sure we're okay. The merger only means hardship for me and others, and I just don't want that to happen.

I've put over half of my life into this company. I've earned my benefits, my pension, my retirement. I don't want to see that go to waste and I don't want to see others get impacted by this situation. Albertsons, my store's parent company, is paying their stockholders a massive 4 billion special dividend as part of their merger deal. This is a slap in the face for workers like myself and others. As a frontline employee, we have been risking our lives throughout the COVID pandemic. We've worked extremely hard to make sure our customers could buy food and essentials to keep themselves and their families safe.

Kroger and Albertsons claimed that the merger will lead to lower prices and a better experience for consumers, but this is not true. If Albertsons wanted to make a better experience for consumers, they could be investing this dividend back into the company now to lower prices, improve staffing and pay and make stores cleaner and safer. The reality is their only interest is in making more money for CEOs and shareholders in our opinion. Workers and consumers will be negatively affected by this proposed merger. The merger will lead to an increased cost of my groceries and others and it may affect my ability to work as well. This is why today I'm asking the FTC to please stop this merger from going through. Thank you for [inaudible 00:37:22].

Douglas Farrar:

Your thank you, Lawanna, for sharing your story. And thank you to all of our speakers who joined us today to share their views. And with that, I will turn this back over to Commissioner Slaughter.

Rebecca Kelly Slaughter:

Thank you so much, Doug. And thank you to everyone who took time to share your concerns and your views today. I want to particularly thank all of the grocery workers who shared your personal experiences with us. Everything we heard today was really interesting and thought provoking, but hearing those human stories I think is especially compelling. So thank you very much. Now we're going to turn to the other items on our agenda. Starting with the presentation by staff on age-related fraud and reporting trends.

The Bureau of Consumer Protection examined more than 2 million reports from the public of various scams and based on its analysis has identified that the types of fraud, method of contact and the consumer harm differed based on the age of the consumer. I want to thank the Bureau of Consumer Protection's Emma Fletcher, Maria Mayo and Patty Poss for undertaking this analysis and synthesizing these findings. It's our hope that these findings can help consumers to better spot potential scams and can inform the Commission's investigation and enforcement efforts. I'll now turn it over to Emma Fletcher for her presentation. Emma?

Emma Fletcher:

Thank you, Commissioner Slaughter and Commissioners Wilson and Bedoya. I appreciate the opportunity to talk to you today about the important topic of age-related differences in consumers'

experiences with fraud. As you know, the agency's core mission is to protect all consumers from unfair and deceptive practices in the marketplace, but to accomplish this, it's imperative that we understand the differences in how fraud affects different populations. As we've detailed in our annual Protecting Older Consumers Report to Congress, our reporting data consistently points to striking age-related differences.

Next slide, please. The FTC takes reports about fraud and other consumer protection issues directly from the public through its call center and its online reporting system, ReportFraud.ftc.gov. A number of agencies, organizations and companies also contribute reports they've collected from consumers. In 2022, the agency took in over 2 million reports about fraud with over 8 billion in reported fraud losses. Most of these reports included consumer age information, which allows us to analyze the data for age-related differences.

Next slide, please. The FTC's reporting data runs counter to the common belief that fraud is primarily a problem that affects older adults. Instead, the reports give us a more nuanced picture. In 2022, younger adults, defined here as those 18 to 59, were 26% more likely than those 60 and older to report losing money to fraud, but older adults reported much higher individual median losses. As you can see here, the 2022 reported median loss for adults ages 18 to 39 was the lowest at \$535 and increase from there. The highest losses we're seeing in the 80 and over age group. Their median reported losses were nearly \$1,700. We see the same general pattern year after year, but that's not the whole story. The vast majority of reports about fraud don't indicate that any money was lost. These are reports about fraud people have spotted or encountered but avoided losing money to. Older adults are much more likely than younger consumers to file these types of reports.

Next slide, please. To get a fuller picture, we also track age differences by fraud type. In 2022, younger adults were much more likely to report losing money to online shopping scams, investment scams, job scams and scams that use fake checks. On the other hand, older adults were much more likely to report losing money to tech support scams, scams that claim you've won a prize, sweepstakes or lottery and scams that impersonate family members and friends. Some of these differences are especially striking. For example, younger adults were about three times as likely to report an investment scam while older adults were over six times as likely to report a tech support scam.

Next slide, please. The agency also looks at how scammers are reaching consumers and here too, we see important age differences. Both older consumers and younger consumers most often report losing money to fraud that started online such as on social media or on a website or app, but as the red bar shows online frauds account for a higher percentage of the younger adults' reports. Phone calls are next for both age groups, but older adults file a much higher percentage of their reports about losses to phone fraud.

Next slide, please. Drilling down into the online fraud data, we can see that the largest age differences are in the share of reports that originate on social media. For younger adults, social media has surpassed any other contact method. In 2022, nearly one in three of their reports of a fraud loss indicated social media was the contact method. For older adults, it was about one in seven. The reports don't tell us why these differences exist, but it's possible that generational differences in the use of social media are a factor.

Next slide, please. Here I've drilled down to more granular age ranges to show you just how consistently reports about losses to fraud originating on social media skew younger while phone fraud reports skew older. Looking at the youngest consumers, ages 18 to 19, on the far left and the oldest consumers, ages 80 and over, on the far right, you can see just how striking these differences are. 45% of reports from consumers just entering adulthood are about fraud originating on social media and they rarely report

losses to phone fraud, but for the older consumers, the pattern reverses and phone fraud is far more frequently reported than any other contact method.

Next slide, please. We also collect data on the methods of payment scammers used to take money from consumers. Here we see that younger adults report a larger share of losses using payment apps and cryptocurrency while older adults report a larger share of payments using gift cards. This actually relates back to differences in the types of fraud they're reporting. For example, reports show that investment scammers are often after cryptocurrency while tech support scammers often demand gift cards.

Next slide, please. Looking at fraud reports by consumer age is just one lens we use to understand the data we collect, and we've worked hard to make aggregate reporting data more accessible to journalists, academics and others who would like to explore the data. We've found that this helps drive research and media coverage, which in turn helps the public. Several years ago, we launched Explore Data, a collection of interactive dashboards that make it possible for anyone to dig into aggregate FTC data to learn more about what we're hearing from the public. We also work to get the word out to people of all ages about how to spot and avoid scams, including on our website at consumer.ftc.gov.

In closing, I'd like to thank Commissioners Wilson, Slaughter and Bedoya for the opportunity to share this information, and I'd like to thank the public for reporting fraud to the FTC. Not only do these reports help us understand the broader marketplace people are experiencing, they help us and our law enforcement partners across the country to identify law enforcement targets. Your reports are essential to our consumer protection work. Thank you.

Rebecca Kelly Slaughter:

Thank you so much, Emma, for that excellent update on recent fraud trends broken down by consumer age. The Division of Consumer Response and Operations does fantastic work to ensure that our consumer protection efforts reflect the latest trends in the marketplace. As shown in the presentation, all age groups are susceptible to scams, not just older adults. Scammers target different consumers based on where they are most exposed or engaged. In 2022, older adults suffered from more scams facilitated over the phone through tech support or impersonations scheme. On the other hand, younger adults are more vulnerable to scams conducted over social media while online shopping or pursuing a seemingly promising investment opportunity. Notably, scammers increasingly use social media as a vehicle for targeting consumers, particularly younger adults. These trends affirm the ways in which digital media platforms have created new tactics and vehicles for fraudsters to exploit, which has in turn exposed an even wider range of consumers to unexpected losses.

The FTC is committed to using all its tools and authorities to address pernicious fraudulent practices that track consumers across age groups. The economy-wide nature of these practices may suggest the need for certain market-wide rules currently under consideration. In that vein, we propose a trade regulation rule to combat government and business impersonation schemes, which have been the largest source of total reported consumer financial losses for several years. We also launched a false earnings claim rulemaking that would allow us to seek significant penalties against bad actors who routinely use get rich quick schemes to cheat Americans out of 1000s of dollars, often saddling them with debt.

The recent Supreme Court decision in AMG Management made it harder for the agency to return money to injured consumers, which remains a very, very serious problem for us that we really hope Congress will address. But in the meantime, the rules we're considering can bolster our ability to get restitution and deter bad actors from future misconduct. The Commission has also brought actions that hold some of the worst actors

Rebecca Kelly Slaughter:

Accountable. Last year we settled allegations against Fashion Nova, an online fashion retailer geared toward younger adults for suppressing negative customer reviews of its products. In its proposed settlement, Fashion Nova will be prohibited from misrepresenting customer reviews and pay \$4.2 million for harm incurred by consumers. We also took action against Walmart for facilitating money transfer fraud and according to our complaint, exploiting older consumers through telemarketing scams.

On top of law enforcement, the FTC sent a notice of penalty offenses to over 700 companies from top consumer product companies to leading retailers and major ad agencies. These companies are now on notice that they could incur significant financial penalties if they use endorsements or money-making opportunities to deceive consumers. While our enforcement efforts help stand up guardrails and deter bad actors from future offenses, we're also focused on better equipping consumers with information that makes it easier to spot scams to begin with.

The Division of Consumer and Business Education regularly releases publications and does targeted outreach on various types of fraud. To broaden our reach, we also work with federal and state regulators to widely disseminate FTC resources in English and also in Spanish. Looking at fraud reports by consumer age informs our understanding of how scammers exploit different groups. And I want to echo what Emma said at the end, that we really rely on public reporting to make sure that we have accurate data and are targeting our enforcement efforts appropriately. So I want to echo Emma's encouragement to please, please report the things that you're seeing in the marketplace. I particularly want to thank our staff and BCB for looking at that data and carefully considering what it means that we're keeping up with the latest trends of bad actors and prioritizing them appropriately.

We will continue to employ every available tool to craft effective remedies that prioritize redress where possible and also prevent future misconduct. Thank you so much, BCB staff for all of your ongoing work to hold bad actors accountable and protect all Americans from deceptive and misleading practices. And now I'll turn to my fellow commissioners to see if they have anything they'd like to add. Commissioner Wilson?

Christine Wilson:

Thank you, Commissioner Slaughter. First, let me reiterate your thanks to the staff that worked on today's presentation, including Emma and Maria from the FTC's Division of Consumer Response and Operations, and also Patty from the Division of Marketing Practices. And thank you to all of our staff who work day in, day out to combat these frauds. It is an important mission. In fact, the FTC's Fraud Program is one of the agency's key tools in protecting consumers. Former FTC Chairman Bob Pitofsky and former Bureau of Consumer Protection Director Jodi Bernstein, launched and grew this robust fraud program several decades ago.

Interestingly, some of the agency initially were reluctant to attack fraud systematically because of the misguided view that the commission should do quote "more important work," but Bob Pitofsky recognized that the FTC had the geographic scope, staff resources, expertise, and appropriate mission to effectively tackle fraud and today the FTC is a leader in this space. Commissioner Slaughter, as you noted, we coordinate our enforcement efforts with local, state, national, and international authorities and over time, our fraud program has returned billions of dollars to consumers. In fact, our fraud program is a mainstay of the agency's work and a critical component of our mission to protect consumers in America.

Questions have been raised about the commitment of the Biden administration to maintaining an emphasis on bringing cases in this space. Former Commissioner Rohit Chopra thought that our resources would be better spent elsewhere and current chair Lina Khan has prioritized rulemaking and other initiatives over bringing law enforcement challenges.

As I have previously discussed at these open commission meetings, we have seen a significant decline in the number of consumer protection enforcement cases since FTC Chairman Simons left office and I am concerned that unfortunately, we are now under investing in the cases that we bring in our fraud program but today's presentation makes clear that consumers across the country are facing a barrage of evolving and creative frauds, including identity theft, impersonator scams, health insurance scams, moneymaking scams, charity fraud, and investment scams. We cannot forget that the numbers in today's presentation reflect actual consumers who have been injured by fraud.

I believe the FTC has a continuing and important role in protecting consumers who have been harmed by bad actors and I support the continued investment of resources in this area. As the staff presentation made clear, and as Commissioner Slaughter highlighted, the FTC also has incredibly helpful resources on our website to help victims of fraud. We regularly produce consumer alerts to highlight emerging frauds, and ftc.gov has many articles and blog posts about frauds and information on how consumers can protect themselves. As both Emma and Commissioner Slaughter encouraged you, I also encourage you, if you have been victimized by fraud, please report the scam. The FTC can use the information that you submit to build cases against scammers, to spot the kinds of trends that Emma described and to educate the public. Thank you again to staff for that great presentation. Thank you.

Rebecca Kelly Slaughter:

Thank you, Commissioner Wilson. Commissioner Bedoya.

Alvaro Bedoya:

Thank you, Commissioner Slaughter. Not much to add here other than my gratitude for Emma and the staff that worked on a wonderful presentation, I learned a lot.

The thing I think I'm curious to learn about and that I'll be talking to staff about are if the strategies to support older Americans and prevent fraud among older Americans are different than for younger Americans. And so clearly the approach of fraudsters to the sector of the population is different, clearly the asks are different, clearly the harm is different. I'm wondering if the education and outreach strategies that have proven most successful are also different.

But on that note, I will return back to you, Commissioner Slaughter, and again, communicate my gratitude for this work and for the staff's work and staying on top of all these trends.

Rebecca Kelly Slaughter:

Thanks, Commissioner Bedoya. I think those are great questions and exactly the kind that we should be asking and thinking about and that I know our staff is deeply engaged in, so I'm looking forward to further discussion on that issue as well.

We will now turn to the last item on our agenda, which is to recognize some of the outstanding contributions of our staff. Every year, the FTC holds an annual award ceremony to recognize the contributions of employees who have gone above and beyond over the course of the year in supporting the agency's mission and their colleagues. At last month's ceremony, we recognize 76 individuals and 11 teams from throughout the FTC who serve in a variety of roles to advance our competition and consumer protection missions and to ensure the effective functioning of our agency.

For me, I find that one of the really great privileges of working at the FTC is the opportunity and responsibility we have to help real people in their everyday lives. We offer that help not only when we're challenging massive mergers, but also when we tackle the myriad smaller ways in which people are denied agency and autonomy. When we fight fraud or manipulative business opportunities or anti-

competitive schemes or bogus fees, we help restore meaningful choice and dignity to consumers and workers, and our staff are the ones who are on the front lines of that work every single day. We could not be more grateful and admiring of their efforts and so lucky to have the opportunity to work with them and learn from them.

Among the achievements that we recognized and celebrated were outstanding supervision, mentoring, scholarship, innovation, technical support, professional support, litigation, commitment to equal opportunity, and volunteerism. Although we'll only be highlighting a few awardees today, I really want to emphasize how deeply and profoundly grateful I am to each and every one of the FTC's 1100 plus employees. I see you. I know how hard you work to serve our agency and the American public, and I thank you.

Today we're highlighting the three individuals who received this year's Robert Pitofsky Lifetime Achievement Award. This award is named in honor of the FTC chairman from 1995 to 2001. It recognizes longstanding dedication to public service and the outstanding contributions and achievements made by an employee throughout their longtime career. I'm going to turn things over to my fellow commissioners to present the first two outstanding individuals who received this year's lifetime achievement award.

Commissioner Wilson, you're up first.

Christine Wilson:

Thank you, Commissioner Slaughter. As you note, the FTC community is filled with people who work hard to protect consumers day in, day out. These people have chosen to dedicate their professional careers to promoting competition and protecting consumers at the FTC. Today we honor one shining example of this excellence.

Donna joined the FTC family in 1993. During the course of almost 30 years, she has touched the lives of countless colleagues and worked daily to advance the mission of the agency. As the administrative officer for the Bureau of Consumer Protection, Donna manages a broad range of tasks. From onboarding new staff to arranging travel and conferences, Donna is the force that makes it all happen. She manages these tasks and many more with enthusiasm and good humor. She's a consummate professional and has an inspiring work ethic. Her reliability and commitment to excellence have enriched everyone with whom she works.

Donna, we thank you for your decades of commitment to the mission of the Federal Trade Commission and I realize that when we blocked and copied from the awards ceremony that we gave in December, we failed to include the last name Donna West in the Bureau of Consumer Protection. We are so proud of you and the way you support your colleagues. Thank you for everything and congratulations on receiving this Lifetime Achievement Award.

Rebecca Kelly Slaughter:

Thank you, Commissioner Wilson, and congratulations to Donna. Now I'll turn to Commissioner Bedoya.

Alvaro Bedoya:

Thank you, Commissioner Slaughter. To echo what Commissioner Wilson said and what you yourself said, this is an extraordinary place. Often what you see on the outside is just a fraction of the work that is being done behind the scenes, not just in terms of enforcement, but making the place run. It's my honor to recognize the second recipient who is John Jacobs of the Western region in the LA office, the Los Angeles office, a veritable institution within the Bureau of Consumer Protection. In the LA office,

John Jacobs has brought impactful cases on behalf of the commission for 35 years, including against Credit Restoration of America, Trek Alliance, National Support Services, Mentoring of America, DeVry University, Manhattan Beach Venture, and Y Green Energy Fund. John has helped attorneys throughout the Bureau of Consumer Protection navigate the quirks of litigating in the Central District of California, both as local counsel and through his invaluable guide to filing in the Central District of California. He continues to make substantial contributions to the commission by serving as a vital source of institutional knowledge and a respected mentor to new commission attorneys. I'd like to congratulate John on his award. Back to you, Commissioner Slaughter.

Rebecca Kelly Slaughter:

Thank you, Commissioner Bedoya, and I will join you in congratulating and thanking John.

Last but certainly not least, our third and final recipient of the Robert Pitofsky Lifetime Achievement Award is Elizabeth Piotrowski in the Office of General Counsel. Over Betsy's four decade FTC career, she has served in BCP, BC, and OGC and as an attorney advisor for three commissioners. As a deputy assistant director for 28 years in the Bureau of Competition's Compliance Division, she was a tireless advocate for aggressive and rigorous analysis and enforcement, often coming up with creative remedies, including cases such as the Chicago Bridge and Iron post-consummation merger and the Evanston Hospital merger.

Betsy has consistently raised the bar of public service, ensuring that teams have what they need to succeed and mentoring less experienced attorneys by sharing her knowledge and encouraging their professional development. Congratulations, Betsy, on your award. It could not be more of an honor and a privilege to have the opportunity to recognize you publicly and I know all of my colleagues join me in my extension of congratulations.

Thank you again to Commissioner Wilson and Commissioner Bedoya and helping honor Donna, John, and Betsy and their decades of contributions to the agency, and thank you again to our staff for their tremendous work each and every day to protect consumers and promote competition. Thank you to all the staff members who contributed to today's open meeting. With that, we are adjourned.