



FTC Open Commission Meeting - March 16, 2023

Chair Khan:

Good morning, everybody. Thanks so much for joining us. This meeting will come to order. We are meeting in open session today to consider two items before the commission. As usual, we'll get started by hearing from members of the public, so I will turn it over to Doug.

Doug Farrar:

Thank you very much, Chair Khan. My name is Doug and I'm the Director of Public Affairs here at the Federal Trade Commission. All of us here at the FTC are looking forward to hearing from members of the public today. But before we do, please note that the FTC is recording this event and some or all of it will be made available to the public record in accordance with our rules. Now, I will call on several members of the public who have joined us, and each person will be given exactly two minutes to address the commission. So let's begin and start with Haley Hinkel. Haley.

Haley Hinkel:

Good morning. My name is Haley Hinkel and I am policy counsel for Fair Play, a kids media and marketing watchdog organization. I'm commenting today in support of the 6B study's agenda item. We encourage the commission to vote in favor of that action, and to that end, look into to the extent possible platform's ability to detect influencer marketing, undisclosed influencer marketing, and paid content that does not meet the platform's own policies and requirements around tagging that comment, especially as that comment reaches kids and teens. In addition, we encourage the commission to investigate the advertisement of alcohol, tobacco, firearms, and other products that violate the platform's own policies or industry self-regulatory guidelines in terms of advertisements of those products to kids. Thank you very much for your time.

Doug Farrar:

Thank you so much, Haley. Appreciate you. Next up we have Bilal Saeed. Bilal.

Bilal Saeed:

Okay, thank you. One hurdle to the commission's successful implementation of a rule prohibiting the use of non-compete agreements is whether and under what conditions the use of non-compete agreements constitutes a method of competition. Now, the commission's statement identified adopts a broad statement of conduct that constitutes an unfair, excuse me, a method of competition, and the statement provides examples of such conduct. For example, mergers in the terms on which products are sold or rebates offered are methods of competition. The statement also identifies misuse of the regulatory process as a method of competition. That suggests to me that the mere participation in the regulatory process is not a method of competition and that something more is required. The conduct must be capable of an anti-competitive or unfair effect in a relevant antitrust market.

Now the commission relies on two general sources for its view that non-competes have such an effect. One source, various empirical papers purporting to measure the effects of non-competes, does not in any significant sense, or any sense really, identify or define competitive effects in a relevant antitrust market. The other source is the commission's three recent enforcement matters. In one of those matters, the commission does not allege an effect on a relevant market. In two matters, the commission does what strikes me as insufficient or perhaps just the bare minimum in identification that the use of non-competes by a single firm may impede entry into the glass container industry. Now, these are very thin reads on which to base a broad prohibition on non-compete agreements, particularly given the history and practice of state courts' ability to distinguish reasonable from unreasonable non-compete agreements. The commission should move forward with a narrow alternative to the proposed ban, a mag moss rule prohibiting unfair and deceptive conduct in the use and enforcement of non-compete agreements.

Doug Farrar:

Thank you, Bilal. We've reached your two minutes. No, we're over. No, I'm sorry. No, sorry. We've got to keep going. Thank you. Okay, the next up is Jane St. Louis. Jane.

Jane St. Louis:

Hello. For your time. My name is Jane St. Louis and I have worked at Safeway in Damascus, Maryland for 30 years. I am also a proud union member and a shop steward with the United Food Commercial Worker. I'm here today to call on the FTC to stop the merger with Kroger and Albertsons. Like many of my fellow union members, I have a long career in the grocery industry and look forward to retiring on my union pension, but I am here because I am worried. I am worried about what the future holds for me and thousands of other grocery workers like me. With the merger of Albertsons and Kroger, our future is now in jeopardy. We know this merger will result in store closures, but we don't know which stores.

There is a Kroger owned Harris Teeter store only a few miles from my store. Their workers don't have unions. They don't have union benefits such as a pension and healthcare. If our store is closed, what are workers like us going to do? Even if Harris Teeter does hire us, we wouldn't make the same money or even have healthcare. On top of that, our town would be left with only one grocery store. That is not fair to us or our community.

And what about my pension? Keeping our pension has not been easy. Three years ago, the private equity executives controlling Albertsons wanted to stop funding our pension and put us at risk of losing our benefits. We nearly had to go on strike just to keep what we had already earned. As part of this

merger deal, they also already taken a billion dollars out of the company for themselves. That's just about all the cash the company has. What does a future hold for working for a company without any money? How will Safeway keep its promise to keep fund of the pension? I hope you can see why workers like me are worried. So I am here to call on the FTC to stop the merger and protect people like me and my coworkers. Thank you.

Doug Farrar:

Thank you, Jane. Thank you very much. Now we'll go to Baron Soka.

Baron Soka:

"We all appreciate the extension of the comment deadline in the FTC's non-compete proceeding, but what matters most is that interested parties have the opportunity to react to and benefit from the comments of others during the rulemaking process itself." So said a memo issued to all executive branch agencies by President Barack Obama in 2011. Chair Kahn has said the FTC should look for guidance to the Administrative Conference of the United States, the official body charged with improving regulation. The ACUS has recommended reply comments for unusually complex rulemaking since 1976. Federal Communications Commission has required reply comments in all rulemaking since 1958. During the Obama administration, FCC officials reported that reply comments improve rule makings because they, "Open initial submissions up to the possibility of being challenged on factual and analytical grounds." That's exactly what the FTC needs.

The non-compete rule is the most important rulemaking in the FTC's 109 year history. It raises exceptionally complex, empirical and legal questions. Only by allowing reply comments can the FTC build a complete record. Reply comments are especially important because the commission may well vote on this rule without the participation of any minority commissioner. For the first time since 1914, a commission designed not to be composed entirely of members of the president's party will be entirely mono partisan, having, "Diverse perspectives and different points of view among the commissioners," wrote then Judge Brett Kavanaugh in 2016, "makes it more likely that the costs and downsides of proposed decisions will be more fully ventilated."

Of course, commenters cannot fully compensate for the lack of minority commissioners or for written dissents, but allowing us all to file reply comments after reviewing the evidence and arguments presented in the comment stage is the very least the commission can do to facilitate the open exchange of ideas called for by President Barack Obama's 2011 executive order. Not allowing reply comments would be profoundly undemocratic. What Commissioner Slaughter said about the benefits of seeking additional comment on the vertical merger guidelines is even more true here. The benefits far outweigh an immaterial delay.

Doug Farrar:

Thank you, Baron, for participating in this open exchange of ideas. Laverne Ren. Laverne.

Laverne Ren:

Good morning. My name is Laverne Ren. I am a former employee with the Kroger Company. I worked for the Kroger Company for 16 years. I am here today to ask the FTC to stop the Kroger and Albertson merger. The reason why I am asking is that I have experienced the Kroger Company building two anti-union store in which they don't allow union members to go to these stores. They don't provide union benefits to these employees at these stores. They don't allow union members, union workers to go to these stores. Unfortunately, some of the union members couldn't make the commute when they shut down my store in Portsmouth, Virginia, and the commute was to Virginia Beach, Virginia, Norfolk, Virginia, Newport News, Virginia. One of my coworkers who had to take three buses due to the shutdown of my store, suffered a stroke when en route to work. When asked if she could go to one of these anti-union store, they refused. Keep in mind, this store was in walking distance from her home.

A few years ago, Kroger brought a local food chain called Farm Fresh, and once again, they opened these stores as anti-union stores to replace our union stores. So one of these stores was across the street from a Kroger store in Norfolk, Virginia, and to make matter worse, they didn't even open that store. So for the community and everything, everybody suffer because of Kroger and because of the merger and because of the things that they do when they buy stores like this. I have seen firsthand these merger will be bad for the employees and the customer. I'm asking please, the FTC to stop this merger. And once again, thank you for your time. I appreciate it.

Doug Farrar:

Thank you so much, Laverne. Thank you for sharing that.

Laverne Ren:

Thank you.

Doug Farrar:

Next is Andy Jung. Andy.

Andy Jung:

Good morning. The FTC should allow for reply comments on its proposed non-compete rule because it raises questions of unusual complexity and exceptional significance. A ban on non-compete clauses would apply to one in five Americans. Labor market regulation is traditionally left to the National Labor Relations Board, and non-competes are traditionally left to matters of state law. They are beyond the FTC's expertise. The NPRM seeks to increase workers' total earnings by 250 to 296 billion per year. Clearly, this is an issue of vast and political significance. It may well be one of the extraordinary cases in which the Supreme Court is reluctant to read into ambiguous statutory text, the delegation claimed to be lurking there. The majority relies on the DC Circuit's 1973 National Petroleum Refiner's decision, but there is little reason to think that that case represents the current state of the law.

Reply comments would build a complete record on two other complex questions. First, what constitutes a method of competition? The FTC's 2022 policy statement defines the term broadly as conduct undertaken by an actor in the marketplace, as opposed to merely a condition of the marketplace. But Congress likely intended something narrower, conduct that suppresses competition by destroying rivals.

As Justice Brandeis put it, "If so, the evidence needed for a UMC rule would focus on exclusion or foreclosure of rivals, not general effects on economic growth, labor mobility, or firm entry." Second, what makes a method of competition unfair? The FTC act does not define UMC. While the commission recently issued a UMC policy statement, it sought no public comment and even that statement leaves many questions unanswered. Understanding how to define UMC requires careful analysis of case law and the legislative record behind the FTC act. Reply comments would allow the FTC to fully consider issuing a rule that addresses non-competes as both the UMC and the UDAP. Thank you so much for your time today.

Doug Farrar:

Thank you, Andy. Next we have Janet Wainwright. Janet.

Janet Wainwright:

Good morning. My name is Janet Wainwright. I have worked for Kroger in Yorktown, Virginia for seven years and I'm a meat cutter. As a worker, I am very concerned with the Kroger Albertson merger and I'm calling on the FTC to stop the merger. After years of illegally violating our union contract, Kroger continues to be in violation of a federal judge's order to remain neutral and allow UFCW to talk to workers. CEO Rodney McMillan talks about union jobs, but he doesn't recognize our union, UFCW Local 400. What I mean by this is that for the last 10 years, Kroger has been systematically closing our union stores and replacing them with anti-union ones. We're trying to unionize 12 stores in the Hampton Roads area, but Kroger interferes with us doing this in direct violation of a judge's order.

They do not give us a private setting for us to talk to the associates as required by the judge's order. They intimidate the associates, and the associates fear for their jobs that they talk to us, which is illegal under federal labor law. They give the new hires an anti-union message when they are hired. We can only talk to the associates when they're working out on the floor and in between customers. Kroger doesn't want their associates to exercise their rights or have a voice at the table. Even when there was a Senate hearing to review this merger, the presidents of the companies got to speak. There was a professor that represented the consumer, but the workers did not get to speak and have a voice at the hearing.

As a worker for Kroger, I ask that you listened to our concerns and don't believe what Rodney says. When we were in negotiations with Kroger for our last contract, Rodney wanted to cut our healthcare, and this was during the pandemic. The union prevailed and we kept our healthcare and it only went up \$1 a year. As workers, we have had to fight with Kroger to get everything that we deserve. We cannot believe what Rodney says when he claims our jobs aren't at risk. We know better. Rodney's actions speak louder than his words. This is why I'm calling on the FTC not to allow this merger to happen. Thank you for listening.

Doug Farrar:

Thank you very much, Ms. Wainwright. Next we have Haven Ronert. Haven, can you come on camera?

Haven Ronert:

Thank you, commission members. I'm Haven Ronert.

Doug Farrar:

Sorry, Haven, before we begin, I just want to note for the record that in order to provide you reasonable accommodation, we're granting you an additional two minutes. Please proceed.

Haven Ronert:

Thank you. Thank you, commission members. I'm Haven Ronert, a UFCW Local 7 member and a seafood manager at Safeway. I'm also a volunteer advocate for the Colorado Cross Disability Coalition. Representing myself and not CCDC for this. In my 20s, I was a stay-at-home father, having grand mal and partial seizures frequently, as well as dystonic spasms and unbearable neuropathic pain. When I was no longer a stay-at-home father and it was time

Haven Ronert:

... to move into the workforce. I had no job skills and dealt with cognitive issues directly related to epilepsy. I got a job at Safeway, had overwhelming support from my union and gradually moved into the middle class. This was a good job for me to ease into the workforce despite cognitive issues. This merger will substantially reduce opportunities for employment within the disability community, limit access to food for those with mobility issues and reduce healthcare options. Please consider from the CDC, quote, "26% of adults in the United States have some type of disability." From the Bureau of Labor Statistics, quote, "In 2022, 21.3 persons with a disability were employed," end quote. This low rate of employment will sink even further with this merger. From the Bureau of Transportation Statistics, quote, "45.5 million Americans aged 5 and older have self-reported, travel-limiting disabilities," end quote.

Food deserts this merger will create will leave many who use mobility devices unable to make it to the store in inclement weather because the next store is so far away. Even additional half a mile of travel to reach a grocery store may prove impossible for these 25.5 million Americans. Employees are already experienced the negative impact of merger transaction. All over the company there has been significant reduction of hours, leaving households scrambling for ways to make ends meet. Right now, I'm being told I have to [inaudible 00:17:44] to schedule employees for 39 hours so they don't hit 40 and secure benefits in full-time status. With all the grocery workers and customers are going to suffer this merger, the disability community will be hit the hardest. Grocery stores are great jobs for people with disabilities to get started in the workforce and these opportunities will be disappearing in communities across the US from store closures. People with disabilities have high retention rates as me and another coworker prove with our combined 33 years of service. Please allow us to continue serving Kroger and Safeway separately. And thank you for your time and consideration.

Doug:

Thank you very much, Mr. Ronner. We appreciate your time. Next we have Phillip Conti. Phillip?

Phillip Conti:

Hello. Hello. Thank you for your time today. My name is Phillip Conti. I'm a member of United Food and Commercial Workers Union Local 400. I've worked in Safeway in Oxon Hill, Maryland for 40 years and

I'm looking forward to retiring on my union pension. I'm here today to urge the FTC to stop the Kroger-Albertsons merger and protect workers like me and communities that we serve. After 40 years in the grocery business, I'm looking forward to retire. I'm also concerned about store closures. Many of our union Safeway stores are across the street from non-union Harris Teeter stores which are owned by Kroger. If my union Safeway closes, I won't be able to get a job with the same pay and benefits at a non-union store.

Furthermore, we are bargaining our contract at Safeway this summer. If Albertsons has no cash on hand after paying billions to shareholders, how will Safeway afford to pay for our wage increases or improvement to our benefits? Hours are being cut so bad, they say that the stores are over-budget and employees are worried. I'm also concerned about my customers. If Safeway and Kroger's merge, they will monopolize the grocery industry in many communities. That's going to drive prices even higher than they already are. Talking to customers, they are also concerned. They say it's already a struggle to feed their families. This is why I'm calling on the FTC to stop the merger before it's too late. Thank you again for your time.

Doug Farrar:

Thank you very much, Mr. Conti, for your time. Next we have Keith Miller. Keith?

Keith Miller:

Good morning. I'm Keith Miller from Franchisee Advocacy Consulting. I work with many franchisee organizations, such as the Asian American Hotel Owners Association and the American Association of Franchisees and Dealers. I'm also the past chair and current director with the Coalition of Franchisee Association. Today my message is simple. It's to say thank you to the commissioners, directors and FTC staff for last Friday's announcement of the request for information on provisions of franchise agreements and franchising business practices. For years, franchisee advocates have been asking for more oversight into the industry, an industry where franchisees are the primary investors but not really protected as investors should be. I can tell you that franchisee advocates are excited and already working on the responses to this request.

In some way, there is shock that the day has come to respond to what we have been asking for. It's a little bit of, "Be careful what you ask for. You may actually get it." The FTC has now done its job to open the door to start the process. It's now up to franchisee advocates and franchisees to walk through that door and support your request. The time to complain has ended. It's time for us to act and work. So again, my message is simple to you. Thank you.

Doug Farrar:

Thank you, Mr. Miller. We have two speakers left and the second to last one will be Sandra Chavez. Sandra? Sandra? Just checking. Sandra, are you there? Okay. We will come back to you. Shavet Thomas. Shavet?

Ms. Thomas:

Good morning.

Doug Farrar:

Hello. Go right ahead.

Ms. Thomas:

Okay. Good morning. My name is Shavet Thomas and I'm a food clerk at Albertons in Southern California and I'm really concerned about the Kroger's plan to acquire Albertons. If the Federal Trade Commission allow this merger to move forward, our lives will be destroyed and our families will be affected tremendously. I personally lived through Albertons merger in 2015. I was working as a full-time cashier at Albertons making \$21 an hour and when my store converted to Haggen's, after two months, they took away my full-time status, even though I have been working at Albertsons for 25 years. Haggen's operation only lasted six months. After Haggen went bankrupt, my coworkers and I were laid off and this was a very traumatic experience for me.

It's really hard. It was really hard trying to find a new job. I had to accept whatever job I was able to find. I did find a job making \$14.85 cents an hour doing the same type of work. My weekly income was cut drastically. This situation lasted for me for about two and a half years. I struggled to pay my rent, buy food and I had to scale back on all my expenses. I eventually had to pick up a second job because there was no way I could make it with the one job. Actually, I worked two jobs for about a year and a half, and it was very exhausting and it really took a lot out of me. I eventually had the opportunity to go back to Albertsons part-time and thanks to my union, they were able to get me my full-time status back. So I cannot even think about this happening again. I do not want a repeat of this Haggen situation, so I, Shavet, am asking and urging that the Federal Trade Commission do not allow this Kroger and Albertons merger to take place. Thank you.

Doug Farrar:

Thank you, Ms. Thomas. Appreciate you sharing that story with us. I will see if Sandra Chavez is there one more time. Sandra, are you there? "Connecting to audio." Can you come off mute, please?

Sandra Chavez:

Sorry about that.

Doug Farrar:

That's okay. Go right ahead.

Sandra Chavez:

My name is Sandra Chavez, and I live in Wheat Ridge, Colorado and work in Denver for Safeway. Currently, I am a file maintenance manager, which means I deal with the pricing in the store. I love serving my customers and I never mind taking the time out of my job to help somebody. I have given my

blood, sweat and tears for over 40 years for both Kroger and Albertsons stores, and I am now approaching retirement. One of my main concerns is that what is going to happen to my pension? If 100s of stores are closed or divested and become non-union or if the stores are sold, those under new ownership fail like they did with the Safeway-Albertsons merger in 2015, either of these scenarios would cause the pension fund, which I will rely on for my retirement, to become endangered. I'm the sole provider for myself, and I'm scared to lose a lot of [inaudible 00:26:16].

Doug Farrar:

Sandra. Sorry, Sandra. You just muted yourself. I'm going to pause your time. You're back. Sorry. Go ahead.

Sandra Chavez:

Okay. Sorry. Most people at my store, my colleagues, are on pins and needles because like me, they are uncertain as to what is going to happen. Most people are concerned about getting laid off. Older workers are concerned with their retirement or losing hard-earned seniority if they have to change companies and like myself, a lot of these people have worked decades for these companies and they just feel like they have just been shoved aside for the stock shares, for the money and for the big people up top. There is talk of the Pension Benefit Guarantee Corporation that will come in and save the day. Unfortunately, that will not make us whole. I'm 60 years old and I'm a mother and a grandmother. It is unrealistic for me to start over in another field and have enough time to save the money I'll need for retirement. I respectfully ask the FTC to stop this merger. Thank you.

Doug Farrar:

Thank you, Ms. Chavez, for your time. And you are the last speaker. So I'd like to thank not only you but everyone who joined us today to offer comments. And with that I will turn this back over to the chair of the FTC.

Lina Khan:

Thanks so much, Doug. And thanks so much to everybody who took the time to come speak today. It's so important for us to be hearing firsthand how the work that we do and the decisions that we make are affecting people in their day-to-day lives. So I'm very grateful for everybody who took the time. We're now going to switch to the items on the agenda. The first item on the agenda is whether to issue orders seeking information from eight social media and video streaming platforms on how they monitor and review deceptive advertising on their platforms.

This is an incredibly important study and I really want to thank the team who worked on it. There were a whole set of people across the agency who worked on it, but I especially want to thank the team from the Division of Ad Practices and the Bureau of Consumer Protection, specifically Laura Sullivan, Rafael [inaudible 00:28:28], Rick [inaudible 00:28:28], and Serena Viswanathan, as well as William Violette from the Bureau of Economics. There were also folks who contributed from the Division of Marketing Practices, the Division of Privacy and Identity Protection, and our Office of General Counsel. So thank you so much to all of you. We're grateful to have Laura Sullivan with us from the Division of AD Practices

to go through an overview of what these orders are seeking to do and the information there would be requesting. So I will turn it over to Laura to lead the presentation.

Laura Sullivan:

Good morning. And thank you, Chair Khan and Commissioner Slaughter, Wilson and Bedoya, for considering our recommendation that the commission approved the compulsory process resolution and issue special orders under Section 6(b) of the FTC Act to eight social media and video streaming platforms. These orders seek information about the company's business practices to screen paid commercial advertising and curb consumers' exposure to fraudulent healthcare products, financial scams, the sale of counterfeits and fake goods and other fraud. I appreciate the opportunity to appear before you today to discuss the proposed 6(b) orders.

This presentation begins with a brief discussion of the rationale behind and scope of the 6(b) orders. It then explains the order's goals. Next, it concludes with a brief overview and highlights regarding the information sought by the orders. Next slide. Social media and video streaming platforms which offer robust ad creation and targeting tools to advertisers may provide unique opportunities for fraudulent marketers to reach consumers. Also, the blurring of commercial and non-commercial messages on social media can make it difficult for consumers to recognize and comprehend when they are receiving advertising and other commercial messages. Commission staff's analyses of consumer complaints submitted to the agency have found that many frauds originate from ads on social media and this trend seems to be increasing.

Next slide. Thus, the proposed orders seek information to show how social media and video streaming platforms scrutinize and limit advertising that may increase consumers' exposure to a range of fraudulent products and scams. The orders also seek information to study the means that the platforms may use to aid consumers in distinguishing advertising or other commercial messages from other types of content on the platforms, including ad labeling or disclosure tools for endorsers and influencers consistent with the principles articulated in the commission's enforcement policy statement on deceptively formatted ads. Notably, except for targeted inquiries about any disclosure tools offered to endorsers or influencers, the orders are restricted to information relating to paid commercial advertising, ads that promote products or services and for which the platforms receive payment or other compensation to publish. This may include existing or already posted content that the platforms amplify or promote to a wider audience in exchange for consideration from an advertiser, sometimes called boosted ads. Next slide. We recommend sending the proposed orders to a range of social media

Laura Sullivan:

... video streaming platforms with sizable audiences. The proposed time period for the orders is for calendar years 2019 to the present. This will permit the study of relevant business practices before and since the start of the COVID-19 pandemic. Next slide. The goal is to deepen the commission's understanding of the scale and types of deceptive advertising on social media and video streaming platforms, the consumer groups who may be harmed by that advertising and the ad revenues generated from those ads. This includes learning about any material differences for English language and Spanish language ads directed to consumers in the US.

The study also should shed light on the efficacy and key differences in ad monitoring oversight across the platforms, including regarding human review and automated systems and the company's intake and analysis of reports from consumers and others. In addition, we hope to obtain insights into whether

consumers are able to recognize advertising and other commercial messages on social media and the efficacy of any means used by the platforms to aid consumers in distinguishing advertising from other types of content on the platforms. Finally, the study will enhance the commission's knowledge about processes for creating ads on the platforms, including use of emerging technologies such as generative AI systems, the ad formats offer to advertisers, including virtual and other extended reality ads, and any e-commerce related features and products to support direct selling or buying of advertised products such as shoppable ads.

Next slide. The proposed order seek mostly written responses in combination with requiring certain data reporting such as ad revenue, number of viewed ads and other performance metrics. Including for ads in specific categories associated with a heightened risk of consumer deception or harm such as products or services purported to treat, prevent or cure substance use disorders, weight loss products, multi-level marketing businesses and cryptocurrency products and services. The orders also seek very targeted documents such as guidance and training materials, business strategy and planning documents, audit and evaluation reports regarding ad review and monitoring systems, consumer research and user testing and organization charts and other documents showing the respective roles and relationship between the ad review and sales teams within the companies. Next slide. I want to thank Chair Khan and Commissioners Slaughter, Wilson, and Bedoya again for your consideration and the opportunity to present on this matter today.

Lina Khan:

Thanks so much, Laura, for the great presentation. I strongly support the study. As Laura mentioned, a lot of the FTCs work has uncovered that major social media and video streaming platforms have become a significant vector for misleading ads, financial scams, and other types of fraud. And given these broader trends, it's important for us to be understanding why fraud is in particular proliferating on social media and if there are any root causes that the FTC should be addressing. And that's really what this study is designed to do. For example, several of the platforms that are earning their revenue, at least in part through behavioral advertising, could potentially be incentivized to be focusing on user engagements in ways that are not always aligning with interests in rooting out fraud and deceptive content on the platform. And so, one thing that I'm especially interested in is understanding how that business model and focus on driving engagement is in fact intersecting with platform's incentive on cracking down on fraud.

And whether instead in some instances they may be turning a blind eye because they've determined that it's in their short term material interest to do so. I'm also going to be especially eager to understand how the personalization and targeting tools the platforms are providing may also be enabling fraudsters and scammers to be targeting their victims with greater precision. And so in some, I think the findings from this study could really be equipping the commission to be combating consumer fraud more effectively and at the root cause. And I think this is a really great example of how our 6(b) tool to do these market studies can be intersecting with our enforcement to make sure that we are learning from market trends and using our resources most effectively. So thanks again to our staff for their work on this and I'll turn it to my colleagues for any remarks before moving it for a vote. To Commissioner Slaughter.

Commissioner Slaughter:

Thank you. Thank you Madam Chair, and thanks Laura for that great presentation. And thanks to everyone in ad practices, the Bureau of Consumer Protection and the Bureau of Economics for the work

you've already put in and designing this study, as well as what I know is an enormous amount of work to come. It doesn't take a whole detailed, meticulously crafted study to conclude that too many of the paid ads we see online are obnoxious and scammy. But the study will help us understand why that is, what is being done about it by ad-serving platforms and where those efforts may fall short. Scammy ads are not only omnipresent and annoying, but they can also pose real dangers to real people. Such as by serving inspectors to lure victims to financial scams or spreading damaging misinformation about health or medicine. I want to comment on two aspects of the study that I'm particularly pleased about.

The first is that it includes Spanish language internet. There's good reason to believe that non-English speakers receive fewer protections in investments and safety online than English speakers. Of course, there are many more languages spoken in the United States than just English and Spanish, but studying the second most spoken language is a great start and underscores the commission's commitment to protect consumers in every community. And finally, I'm really excited that we're going to seek responsive data starting in January 2019, a full year before the pandemic upended the world and made the internet even more central to our lives because I think that will really help us understand not only what is happening today, but how that has changed since the pandemic started. So with that Madam Chair, I am happy to support the study and we'll turn it back to you.

Lina Khan:

Great. Thank you. Commissioner Wilson.

Commissioner Wilson:

Thank you, Chair Khan. I'd like to just respond to a couple of comments that the commenters provided. I always find the comments incredibly helpful and constructive, and I think having reply comments, a reply comment period on the non-compete proposed rule is an excellent idea. Had not thought of that until the commenters raised it, which just highlights one of the benefits of these open commission meetings. And so thank you very much for those suggestions. And second, I wanted to just say a word about the request for information that was released on Friday. One of our commenters raised this issue, the press release headline says, "FTC Seeks Public Comment on Franchisor's Exerting Control Over Franchisees And Workers." I did not see the RFI before it was released, but if I had, I would've encouraged the commission and staff to issue a more neutral and balanced request for information that would hear from both franchisors and franchisees.

I believe that making durable lasting change requires a neutral process that carries with it credibility and integrity and hearing from only one side of the equation I believe is not going to set the agency up for making lasting change in a way that will be respected frankly by the courts and by our stakeholders. So if I had been asked that, that is the input that I would've provided, but to the matter at hand today, thank you so much to Laura Sullivan for the presentation and to the staff in the Bureau of Consumer Protection, the Bureau of Economics, the Office of General Counsel, and the Chief Technology Office for their work on this recommendation in the division of Advertising practices. Thanks especially to not just Laura but Raphael, to Rick Caricima and Surveena Biswanathan and the managers in that shop and to everyone else who worked on this.

One of the unique aspects of the Federal Trade Commission is its perennial pursuit of learning through workshops, hearings, and 6(b) studies like those on the agenda today. The agency stays abreast of new technologies, evolving industries and business practices and legal and economic advances. These initiatives inform the commission's law enforcement agenda and its policy positions. And as staff

discussed, we've seen a surge in deceptive and fraudulent advertising on social media and video streaming platforms. Given this trend, the topic of this study likely will be beneficial to consumers who use these services, but obtaining and analyzing the data from the study will require significant resources. I will note that the FTC currently has multiple 6(b) studies underway, including one focused on social media and video streaming service providers. Second on pharmacy benefit managers, a third on the impact of physician group and healthcare facility mergers. And a fourth on the competitive impact of supply chain disruptions in consumer goods.

The commission has also launched numerous expansive rule makings including the commercial surveillance and data security trade regulation rule, and the unfair or deceptive fees trade regulation rule, and the very important CAPA rulemaking that was launched more than three years ago has languished. Given the diversification of American commerce and the growth of our national economy, our staff are consistently called to expand the scope of their work, and despite limited resources, staff have never failed to rise to the challenge. But we do in fact have limited resources, limited statutory authority, and limited bandwidth, and as a result, hard choices must be made. I would hope that the commission's law enforcement efforts will not be diluted to significantly by the expenditure of resources in so many other areas. To facilitate transparency and accountability, it would be helpful for the public to understand how many full-time employees are being allocated for this 6(b), for the other ongoing 6(b) studies and for each of the rule makings that are underway. Again, I commend the staff for the excellent presentation today and for the very thorough work putting together this 6(b) study. Thank you, Chair Khan.

Lina Khan:

Thanks, Commissioner Wilson, since you mentioned the 6(b), the RFI seeking comment on franchisee and franchiser relationship, I'll just underscore that I think there was an enormous amount of research and understanding that went into the crafting of that study and it really asked the whole set of information, some of which it's really franchisers at are best positioned to respond and engage. So we really are keen on understanding all sides and in particular for information that only franchisers are going to be best positioned to be providing. Very keen for that input as well. Commissioner Bedoya, over to you.

Commissioner Bedoya:

Thank you, Chair Khan. I'm really happy to support staff's recommendation to issue 6(b) orders to these eight social media and video streaming platforms today. I'm particularly happy that these orders will pose questions that I personally have been asking since joining the commission about 10 months ago now. And those are questions to echo Commissioner Slaughter about whether platforms treat English language and Spanish language advertisements differently as well as advertisements in other languages. In my remarks to the National Association with Attorney Generals last August, I asked whether historically underserved communities are disproportionately targeted with online fraud and specifically whether Hispanics in the US are exposed to a disproportionate share of it. Studies do show that Hispanics are more likely to use leading social media sites and messaging apps than other groups, and that we spend more time on these platforms as compared to the general population.

There are also indicators that non-English speakers are targeted with fraudulent ads, but it's right now very hard to find statistics on that. In fact, I and my own staff struggle to find those statistics a couple months ago, and as a result, it was really hard to determine which online tools and practices used by the

platforms are more or less effective at addressing this fraud. Today's 6(b) orders will help us understand all of that, and I think there are critical step forward. I want to highlight that they're also going to get at some equally important questions about the number of staff that platforms hire who are non-English speakers, because without enough Spanish language staff and staff proficient in other languages to monitor platforms, more fraud can and will make it onto those sites.

In particular, I want to underscore that in the past, major platforms have refused to answer these kinds of questions when they came from Congress who made those questions in the form of requests. With these 6(b) orders, and let there be no confusion, while this is a study, these are orders that we're voting on. We hopefully will be able to finally get answers once and for all to the resources the platforms are allocating to prevent these kinds of frauds and prevent these kinds of disparities. So I want to thank absolutely everyone that worked to make these 6(b) orders a reality and to put them in front of the commission and to present on them today. Thank you, Chair Khan, and thank you to my colleagues

Lina Khan:

Thanks so much, Commissioner Bedoya, and thanks to all my colleagues for their comments. So will that, I will now move this item for a vote. I will move that the commission pursuant to its authority under section 6(b) of the Federal Trade Commission Act issue the resolution authorizing use of compulsory process circulated on February 13th, 2023 and the special order circulated on March 14th, 2023, under matter number P224500 seeking information concerning the detection and monitoring of deceptive advertising by social media and video platforms. Is there a second?

Commissioner Bedoya:

Yes. Second.

Lina Khan:

The motion being seconded. I'm calling it for a vote. Commissioner Bedoya?

Commissioner Bedoya:

Yes.

Lina Khan:

Commissioner Wilson?

Commissioner Wilson:

Yes.

Lina Khan:
Commissioner Slaughter?

Commissioner Slaughter:
Yes.

Lina Khan:
And I vote yes. The motion passes unanimously. The second item on the agenda is whether to issue orders seeking information on how credit reporting agencies collect and report data about small businesses as well as how they market their business credit reporting products. One of the more underappreciated challenges that small businesses face is ensuring that business credit reporting companies are using accurate and up-to-date information about them. Individual consumer credit reporting is covered by a whole set of laws, including the Fair Credit Reporting Act, but credit reporting for businesses falls in a regulatory gap that is not covered

Lina Khan:
By similar laws as we have for consumer facing products, and the stakes can be really high for small businesses. So despite their importance, these credit reporting services can be tremendously opaque. Many credit reporting companies can start developing a firm's credit report at the time that it incorporates, tapping public records and other available financial data without the business owner's knowledge. But when these reports include errors or incomplete information, it can be very difficult for small business owners to quickly fix discrepancies. And these inaccuracies can be incredibly costly for small businesses. So for suppliers that are looking to gauge whether a small business will pay its bills on time, missing or inaccurate data can be reason enough to classify a business as risky. And oftentimes we've seen that small businesses only discover that there are problems with their credit report when they're actually denied trade credit or receiving less favorable contract terms, or it may even lose a contract altogether.

We've also seen that credit reporting companies can market products to small businesses that promise to improve their credit reports, but that these products are not always delivering to the extent that they claim they will. That specifically is actually what we found when we investigated Don and Bradstreet. We brought an enforcement action last year and we specifically found that not only had Don and Bradstreet reported inaccurate information about small businesses on their credit reports, but it actually failed to even provide any clear or consistent or reliable way for businesses to actually get corrections. So this study would shine a much needed light on this industry that has not yet been studied extensively and does fall in somewhat of a regulatory gap. And it would also shed light on a critical part of the system for small businesses. And we want to make sure that businesses have every opportunity to succeed.

So I'm especially grateful to our staff from the East Central Regional Office in Cleveland for making this recommendation to the commission, specifically Harris and Turia, Dana Baragate and Sammy Nastigal, as well as Margaret Patterson in the Bureau of Economics, and Katie Worthman and the Bureau of Consumer Protection. So thank you so much for all of your work on this. And I would say this is another example where this study is really following some of the experience and expertise that we've gained

from our enforcement work. So it's really nice to see that relationship between our enforcement work and our market study tools. With that, I'll turn it over to my colleagues to share any comments starting with Commissioner Slaughter.

Commissioner Slaughter:

Thank you Madam Chair. And I want to echo your thanks to Harris, Dana and Sammy as well as everyone else in the Cleveland office. You guys are doing great work and it is so exciting to see and to get the support. And with that, I'm pleased to support this study. I think it's a really important issue. As the chair mentioned, it came out of really important enforcement work and does a really good job pulling together our various different authorities to make sure we're getting a full picture of what's happening in the markets and bringing enforcement action where appropriate and following up where appropriate. Our first foray to the market was, as the chair mentioned, a groundbreaking investigation and enforcement action against Don and Bradstreet. And one of the most important things we learned in that matter was how little we or the public understand about this opaque market.

So a 6B study is just the right tool to pull back the curtain and let in some light. I expect we'll learn a lot of vitally important information about how this market works or doesn't work for small businesses. Of particular interest to me is information we'll seek about the role's algorithms, and alternative data plan in this market and whether there may be disparities that impede small business owners who are members of protected classes from having a fair chance to achieve their dreams. So with that, I'm pleased to support it and thank you Madam Chair.

Lina Khan:

Thanks so much. Commissioner Slaughter. Commissioner Wilson.

Commissioner Wilson:

Thank you, Chair Khan. And thank you to the staff from our Eastern Central Regional office, the Bureau of Consumer Protection and the Bureau of Economics for their work on this recommendation. As with the social media ad fraud 6B, staff have crafted a very thorough set of inquiries at our 2022 Don and Bradstreet case that Chair Khan mentioned demonstrated that the topic of the 6B likely will be beneficial to small businesses throughout the US. Statistics released in the last few days indicate that firms with fewer than 10 employees account for close to 80% of businesses in the US and firms with fewer than 20 employees made up 89% of businesses in the US. And so there are many businesses that will benefit from this study. As I noted earlier today though, there are many worthwhile projects for the agency to pursue. And in a world of infinite resources, prudent governing requires hard choices about where to deploy those scarce resources.

But thank you all again to staff for your work on these matters. It's always a privilege to work with the dedicated and talented staff at the FTC. I'd like to raise one other issue in my remaining time. On February 28th, Chair McMorris Rogers of the House Energy and Commerce Committee and Chair Bill Araquis of the Subcommittee on Innovation Data and Commerce sent a letter to Chair Khan. They requested, among other materials, an unredacted version of my dissent in the commission opinion on chair Khan's recusal from Meta within. Last night I received a copy of Chair Khan's response saying the FTC has begun the process of collecting documentary materials and we'll follow up with the committee when it has more information on the status of any submissions.

The commission has long responded fully and promptly to requests from the chairs of Congressional Committees. Chair Khan, when you were counsel to the House Judiciary Committee, the Republican led commission routinely voted to provide unredacted non-public staff memoranda to your committee, which was, at the time, Democrat led. As the subject of the recusal motion, it would've been inappropriate for you to participate in the Rule 4.17 recusal process or in the redactions that were imposed on my dissent. But you have talked about making this the most transparent FTC ever. Today I'd like to give you the opportunity to do so. In the spirit of transparency, accountability, and bipartisanship, I move that the commission transmit to Chair McMorris Rodgers and Chair Bill Araquis today the unredacted version of my dissent in the matter of Meta Zuckerberg within.

Lina Khan:

So I understand Commissioner Wilson just made a motion. Is there a second?

Commissioner Wilson:

Chair Khan, perhaps you could be the second for the motion.

Lina Khan:

So just to [inaudible 00:55:11]

Commissioner Bedoya:

Chair Khan.

Lina Khan:

Go ahead.

Commissioner Bedoya:

Commissioner Wilson has raised some issues, I didn't anticipate this coming up right now, but given that she's raised these issues, I want to say a few things and then I will not be seconding the motion. Quickly, and I need to be careful because of the redactions and the laws that were behind them. In the 1980s, a Republican chairman of this commission proposed and issued, and the commission set forth rules as to when and where confidential information generated for deliberations before the commission should be released. In issuing the redactions that we did, we abided fully by that law. I will not enter into this in more detail because doing so would reveal the substance underneath the redactions. The transcript for these proceedings exists. I am confident that Chair Khan together with anyone else who's a member of the commission will fully comply with Chair McMorris Rodger's request. But I want it to be perfectly clear that any insinuation that the process that this commission has had in place for 40 years regarding redactions was not followed would be entirely incorrect. So for that reason, I will not be seconding Commissioner Wilson's motion. Thank you.

Commissioner Wilson:

Well, Commissioner Bedoya, my motion is not to make the materials public and the memorandum that you referenced was a ruling by the commission on whether to make materials public, but my motion is to provide those materials to Congress and we voted routinely when chair Joe Simons, a Republican, was leading the commission to provide materials to representative Cicilini who was chairing the House Judiciary Committee. We provided many, many unredacted versions of staff recommendations to Chair Khan for her review during that process of investigating big tech. The commission voted many, many times to send hundreds and thousands of pages of unredacted materials that contained staff deliberative process to the committee. And that is what I am asking today.

Commissioner Bedoya:

Thank you for that clarification. Your remarks did speak to the nature of the redactions, hence my response. But since you raised the question of Congress, I should also add that yes, it is, in my experience, the policy to provide information to Congress, absolutely, that goes above and beyond what is available to the public as is appropriate and as is Congress' power of oversight as that provides. At the same time, based on my years of experience on Capitol Hill and my understanding of agency and commission compliance with Congressional oversight, this process takes time. And additionally, the process does not involve a wholesale turnover of every single document. In many instances, there's legal reasons for that. Now, not being familiar with the details here, I'll refrain from commenting further. However, for that reason I won't be seconding the motion. And also we haven't had the full opportunity to study the record before us.

Lina Khan:

Thanks, Commissioner Bedoya. I'd be remiss if I also didn't note that some of the discussion that is taking place, some of these debates have already also been hashed out in some written material that is also available online, including an opinion that Commissioner Slaughter and Commissioner Bedoya wrote in the meta within recusal matter. Commissioner Wilson's dissent is also available online. So for anybody interested in digging deeper into these issues, a lot of these debates have already been documented and those materials are available. I'll say overall, we work diligently to make sure that Congress is getting the information that they've asked for, especially when there is some sensitivity involved relating to non-public materials, it can take longer to arrange for that material to be transmitted. In the past, we've also arranged for members and their staff to come look at materials at the FTC when we're relating to non-public information.

So our staff is working diligently to ensure that we are engaging with Congress and getting them the information compliant with our own policies and procedures. So thanks as well to our staff for their ongoing work on that. Commissioner Wilson made a motion, so I do want to make sure we tie that thread. Is there a second on her motion? The motion not being seconded? The motion fails. Thanks, Commissioner Wilson. Commissioner Bedoya, would you like to share any remarks relating to the 6B that we were discussing relating to small business credit reporting?

Commissioner Bedoya:

Absolutely. So I'll make this brief. Typically, the scrutiny of credit reports that this commission has afforded has been focused on credit reports for individuals. And for the last 50 years we've enforced the Fair Credit Reporting Act, but exactly as you said, and my other colleagues said that the impact of a credit report for a small business is just as important and raises just as problematic issues in certain circumstances. And so for that reason, I'm happy to vote for these orders and moving forward today. Thank you.

Lina Khan:

Great. Thank you so much. With those remarks concluded, I'll now move this for a vote. So I will move that the commission pursuant to its authority, under section 6B of the FTC Act, issue the resolution authorizing the use of compulsory process and the special order circulated on March 14th, 2023, under matter number P227704, seeking information concerning the policies, procedures, and practices of small business credit reporting product providers. Is there a second?

Commissioner Bedoya:

Yes.

Lina Khan:

The motion being seconded, I will call for a vote. Commissioner Bedoya?

Commissioner Bedoya:

Yes.

Lina Khan:

Commissioner Wilson?

Commissioner Wilson:

Yes.

Lina Khan:

Commissioner Slaughter?

Commissioner Slaughter:

Yes.

Lina Khan:

And I vote yes. The motion passes unanimously. Thanks so much to my colleagues for their contributions and insights as well as two members of the public who joined at the beginning. I want to also acknowledge that today marked Commissioner Wilson's last commission meeting before she departs the agency at the end of the month. We're all grateful for your public service and for your service to the agency and wish you the best in your next endeavor. This concludes the business of the commission and we are adjourned. Thanks so much everybody.